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ABSTRACT

Originally presented at an American Indian Studies Center conference in 1978, the papers in this volume comprise a review of the American Indian Policy Review Commission (AIPRC). The introduction makes the observation that many AIPRC problems might have been avoided if the federal government had funded an ad hoc Indian group whose task would have been to choose the AIPRC's commissioners and to bring in consultants to gather new social scientific data on the conditions of American Indians. While presenting a balanced review, a number of writers do point out that the failure of AIPRC to collect new data seriously limits the effectiveness of AIPRC recommendations. Two articles cover the political, historical, and legal origins of the AIPRC while the next two articles review the treatment individual task forces gave to Indian health, education, and tribal government problems. Drug and alcohol abuse among Indians is the focus of two papers and yet another critiques the Education Task Force. It is noted that the early promise of the Commission has not been fulfilled because of the failure of participants to follow through with analysis of the data that were collected. Other articles analyze the work of the task force on urban Indian affairs: and the final articles assess the anticipated impact of the AIPRC's recommendations on legal issues. (AN)

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IN FEDERAL POLICY

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American Indian Studies Center
University of California, Los Angeles

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NEW DIRECTIONS
IN FEDERAL INDIAN POLICY

A Review of the American Indian Policy Review Commission

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CONTEMPORARY AMERICAN INDIAN ISSUES SERIES, NO. 1

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INTRODUCTION

The collection of articles in this volume were originally presented as papers at a conference sponsored by the American Indian Studies Center, UCLA. The conference was the second in a series of annual conferences held to examine contemporary issues of importance to American Indians. The 1978 conference focused on a review of the recently completed American Indian Policy Review Commission (AIPRC).

From its very inception, the American Indian Policy Review Commission was expected to have the same profound and lasting effect on Indian policy that characterized the controversial 1928 Meriam Report. The Meriam Report had been criticized by Indian leaders because it had little Indian input into the preparation of the report. The Congressional framers of the AIPRC sought to correct this problem by including American Indians as full commissioners, and by making the majority of the staff members Indian. Yet, the AIPRC has not been able to avoid controversy.

The Commission was born out of an agreement among Indian leaders and Congressmen that an examination of current Indian affairs was long overdue. Since the time of the Meriam Report, and subsequent Indian Reorganization Act in 1934, many changes had taken place in the nation and among Indians. Participation in World War II exposed many Indians to Western society. Termination legislation in the early 1950's created among Indians a suspicion of federal intentions which lasted for two decades. The federal program of relocation moved thousands of Indians to urban areas. In the middle 1960's, funding of federal social programs greatly increased. Finally, at the beginning of the 1970's, Indian activism reached a peak not seen since the middle of the nineteenth century. All these changes required that a major reassessment be made, both of current conditions among Indians, and of current federal Indian policy.

Although there was general approval among Indians for a review of federal Indian policy, agreement stopped when it became time to choose the Indians who would serve as commissioners. The five Indian commissioners were Ada Deer (Menominee), John

Borbridge (Tlingit-Haida), Adolph Dial (Lumbee), Jake Whitecrow (Quapaw-Seneca-Cayuga), and Louis R. Bruce (Mohawk).

Shortly after their appointment, the National Tribal Chairmans Association (NTCA) filed a lawsuit which claimed that the Indian commissioners were unrepresentative of a large segment of American Indians. Their concern was easy to understand. The tribes represented by the five commissioners were not among the mainstream of American Indian life, as measured by such factors as total population, use of social programs for Indians, and involvement in national Indian organizations.

After a court rejected the NTCA suit, the Commission was able to begin its work. Unfortunately, criticism of the AIPRC did not end. The second problem area, as pointed out in several of the following papers, concerned the way in which the separate task forces gathered data. The main approach used by the Commission was to hold hearings across the nation at which time Indians were able to make statements. Although such a procedure allowed Indian people to voice their complaints, it provided little hard data. To a great extent the desires of Indian people were already known to Congress since national Indian organizations have long lobbied Congress on important issues.

The failure of the AIPRC to produce substantial new data on conditions among Indians has been attributed to the fact that the emphasis of the Commission was on reviewing policy. However, over the years much of federal policy has been based upon implications drawn from social scientific research. Here a good example would be the two Supreme Court decisions ending public school segregation by integration programs and busing. In its decisions, the High Court held that separate school systems were psychologically and academically damaging to segregated Black children. Yet the research of social scientists has not led them to reach the same definitive conclusions. The Court was basing its judgment, in effect, on evidence that was more in the nature of unsupported opinion than on firm scientific conclusions.

Many of the AIPRC problems that were commented upon in the papers in this volume would have been avoided if the Commission had been organized according to the following recommendations. First, the federal government should have turned the money over to an ad hoc Indian organization composed of representatives from the larger national Indian organizations, and from the larger tribes. The task of the ad hoc group would be to choose six Indian commissioners, including one representative each from the Sioux tribe, from one of the Five Civilized tribes, and from the Navajo tribe. Second, the commissioners would bring in consultants to conduct studies similar to the Coleman Report in 1966 on the education of minorities. By gathering new social scientific data on the conditions of American Indians, the Commission would be addressing the problem created by the fact that most comprehensive data on Indians has been produced by federal agencies. An independent assessment of conditions among Indians is sorely needed. If the AIPRC had collected new data, it would have been able to gain the strong support needed to see its recommendations implemented. At the very least, a survey of randomly selected programs should have been conducted.

In the articles that follow, a number of writers point out that the failure of the AIPRC to collect new data on Indian problems seriously limited the effectiveness of AIPRC recommendations. All articles, however, are not critical of the AIPRC and its recommendations. Instead, they present a broadbased review of the American Indian Policy Review Commission.

The articles by Mark Thompson and Donald Grinde effectively cover the political and legal origins of the AIPRC. Thompson worked as an aid for Senator James Abourezk and thus was able to view the creation of the Commission from an insider's perspective.

Many articles review the treatment the individual task forces gave to social programs. The articles by Cecelia Gallerito, Susan Guyette, and Baba Cooper concentrate on the AIPRC's study of health problems among American Indians. Both Guyette and Cooper focus on drug and alcohol abuse among Indians, perhaps the most serious health problem. The article by Grayson Noley examines the education task force of the AIPRC. He points out that the early promise of the AIPRC was not fulfilled because of a failure to follow through with analysis of the data that was collected.

Additional articles by Joseph Stauss and David Beaulieu review the work of the task force on urban Indian affairs. Stauss comments that the report appears as if it was written before the urban task force even began to gather data. Finally, the anticipated impact of the AIPRC recommendations on legal issues is reviewed by Al Logan Slagle and Jerry Muskrat.

Anthony D. Brown

NURTURING THE FORKED TREE: CONCEPTION AND FORMATION OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

Mark Thompson

When you look across the open prairie, you will see a large, beautiful cottonwood tree. It sits there in all of its majesty, dominating the landscape, and telling its story:

> Look at me. Look at me closely. Walk all the way around me. Look up through me. Climb up into me and look down through me. See me and experience me from all perspectives. You will notice something about me that is mysterious and powerful. I am a forked tree, flowering and growing through each turn of the wind and rain and clouds.
>
> My northern part is very sad. You can see that it is all weathered and beaten. My branches there, grow bent and crooked. My face on that side is ugly and nasty. There is a certain bad or evil within me. This is not the fork under which one would choose to live.
>
> My southern part is very happy. You can see that it is full and beautiful. My leaves are lush and green. My branches grow long and strong and flowing in the gentle breezes. I provide great shade in which many of my relations live and play.
>
> Both of my parts, the ugly and beautiful, the bent and straight, the bad and the good, are rooted through my center, my trunk. It is the center that is important. I could survive with either of my forks damaged or reduced; I would not be whole, but I would survive. I would not survive or flourish without being wholly centered and rooted. If you dig me up you would see that my roots are much like my branches, forked with their own good and bad. This reinforces my center and my strength. It builds my beauty and power. I exist and am a bridge between the world of the sky and the world of the earth, as you humans are also bridges between these spaces.
>
> We are all both bad and good. We are all both beautiful and ugly. We are all both bent and straight. This is the way of the Whole World. This is the lesson of the forked tree. It should always be remembered.

The lesson of the tree is most applicable to the story of the American Indian Policy Review Commission (AIPRC). From its inception to its published final report, the Commission manifested itself as a forked tree for all that have perceived it. Controversy, praise, rejection, acceptance, rebuttal, compliance, protest — all of these reactions to and relations with the Commission symbolize the forked nature of the process and its being in the world.

This paper will examine the development and background of the American Indian Policy Review Commission. It will illuminate and bring into fresh perspective some of the nuances of the political processes affecting the relationships between American Indians and the Federal Government of the United States. Three areas of focus will be presented. The first to be discussed is the period from the creation of the AIPRC legislation to its final passage as an act of Congress. The second area will focus on the preparation and selection of the Commission members. The third area covers the task force development and staffing selections by the whole Commission, with some additional material concerning views of excepted and/or desired outcomes.

James Abourezk was born and raised in the small town of Wood, South Dakota. Wood rests in the northern area of the Rosebud Indian Reservation. In his early youth, Abourezk became increasingly and painfully aware of the day-to-day misery of American Indians. He was privy to some of the inner workings of the tribal government and Bureau of Indian Affairs (BIA) agency supervision. His family members were important reservation merchants and serviced contracts through some federal programs for the American Indians. When Abourezk received his law degree after the Second World War, he dedicated himself to improving the life and conditions of the Indians. This dedication led to his involvement in trying to understand the legal and moral parameters of the relationship between the Indians and the Federal, State, and local governments.

While serving as a member of Congress in 1971, Abourezk began to formulate some notion of how to best serve his chosen path of dedication. He studied the history of federal Indian policy, noticing that a thorough review of it had not been undertaken since the 1920's. Fifty years changed many of the basic tenets of American life and should have been reflected in changes in policy towards the American Indians. Yet, in spite of vast technological and sociological changes ongoing in the American society, the relationship — politically, morally, and legally — between the Indians and the

United States still retained the sentiments and attitudes of the 1930's. It was clearly time to do something, especially in view of rising militant attitudes among some Native peoples.

Following his election to the U.S. Senate in 1972, Abourezk lobbied successfully for the post of Chairman of the Subcommittee on Indian Affairs. When sworn into office, he immediately began to formulate, through consultation with selected staff, plans to conduct an in-depth and wide ranging re-examination of the Federal government's relationship with the American Indian. Sherwin Broadhead and Forrest Gerard were especially helpful in assisting with the formation of ideas into workable contexts. During the strife of events at Wounded Knee in 1973, and afterward, more diligent efforts were made to develop quickly a program that could fulfill the desired commitment to review, as well as respond to the growing political pressures from both conservative and radical arenas.

In the late Fall of 1973 the initial legislative proposal was in final preparation. Abourezk had envisioned a large, representative commission of Indian leaders and concerned legislators, performing a thorough, step-by-step investigation and review of federal policy and its effect upon Indians. He was successful at pushing through the subcommittee on Indian Affairs a bill that authorized a fifteen member commission composed of ten members of Congress: five from each house, and five at-large members from the American Indian community. The contemporary mood of the Interior Committee regarding possible conflicts made the small number of appointed Indians necessary. It was felt that a large number would expose elements of the radical AIM orientation into the proceedings. The thought was that five American Indians could be found who were judicious and representative of all Native American viewpoints without jeapordizing the austere reputation of the U.S. Congress. The full Senate passed the bill with little debate during the winter of 1974.

The bill was sent to the House where, without much concern or interest, it languished for some months. Through the efforts of Abourezk, his staff, and Senator Henry Jackson, pressure was brought to bear on House committee members, particularly Lloyd Meeds, to bring the bill to the floor. When the legislation finally was presented to the House in August, much debate ensued over the size of the commission and its funding provisions. The bill was sent to a committee where amendments were made reducing the commission from fifteen to eleven, and augmenting the funding to show House responsibility. A further reduction of the long preamble, though stream-lining the bill, took some of the sting out of the legislation.

The preamble was dropped in committee due to some growing awareness that within the House there were some members, representing areas with significant conservative populations, who would balk at certain statements regarding policies of self-determination. This was made clear to Rep. Meeds after his introductory remarks in August.

> Federal policies which attempt to solve Indian problems on a piece meal basis without an awareness that they are interrelated and that the one is often both a cause and an effect of the others. The result is that we have seen the growth of a massive bureaucracy in the Federal Government directed toward Indian problems, particularly in the Bureau of Indian Affairs, and the waste of Federal funds through inefficiency of administration and duplication and overlapping of programs.
>
> It is imperative, if we are to aid the Indian tribes in achieving self-sufficiency and true self-determination, that the legislators and administrators understand that there is one Indian problem which is composed of lesser, specific problems which are interrelated, and which impact upon one another. If we as legislators are to achieve this awareness so that we can legislate on a coherent, rather than piece-meal basis, it will be necessary to conduct a review of Indian affairs, Indian policies, and Indian problems on a comprehensive basis. (*Congressional Record:* Aug. 22, 1974).

Notably, certain statements by Meeds tended to cause the BIA to shudder with insult and to feel somewhat threatened (i.e., self-determination combined with wasteful and inefficient administration meant shortened tenure for BIA members). But it was the nature of the self-determination clauses that caused the real resentment. Excerpts from the deleted preamble may help illuminate this problem.

> Recognizing that the unique relationship of the American Indian people and the Federal Government is based upon the Constitution, numerous treaties and a still-growing body of statutory law and court decisions, that this relationship carries with it a Federal trust responsibility for the protection of Indian land and rights to their natural resources and for the provision of public services to Indian people, that this solemn and legal responsibility has not been adequately fulfilled, that the Indian people have been denied the opportunity to realize the full potential of their human and natural resources, and, therefore, that those results demonstrate that the national Indian policy and the administration of Indian affairs is not in the best interests of the Indian people, the general public, and the Federal Government, the Congress declares that it is timely and essential to conduct a comprehensive review of the historical and legal development underlying the Indian's unique relationship with the Federal Government in order to determine the nature and scope

> of necessary revisions in the formulation of policies and programs for the benefit of Indian people.
>
> Whereas article I, section 8, clause 3 of the Constitution of the United States, gives the Congress the power "to regulate commerce** with the Indian tribes" and this clause has been consistently interpreted to give Congress plenary power over Indians and Indian trusts ...
>
> Whereas the Constitution, numerous statutes, treaties, and judicial decision have charged the Federal Government with a special trust responsibility to protect and enhance Indian lands, water, and other natural resources; and
>
> Whereas the national American Indian policy, from the beginning of this special Federal trust responsibility, has followed an inconsistent pattern and has failed to assist Indian people to achieve their individual, family, and community goals; and
>
> Whereas the administration of Indian affairs by the governmental institutions charged with fulfilling the special Federal trust responsibility to Indians is characterized by a morass of conflicting policies and practices that serve to inhibit the exercise rather than encourage the fulfillment of such responsibility to Indians; and
>
> Whereas, as a direct outgrowth of the inconsistent policy pattern followed by the Federal Government, generations of Indian people have suffered social and economic deprivation unparalleled by any other segment of society;
>
> Whereas the failure of governmental institutions to enable individual Indians to enjoy good health, to receive meaningful academic and vocational training, to find satisfying employment, to live in decent and acceptable housing, and to enjoy fundamental civil rights has contributed to feelings of despair, frustration, and alienation among young and older Indians alike;
>
> Whereas the despair, frustration, and alienation experienced by many Indian people have led to deep division in the Indian community and such division having already manifested itself through serious eruptions which conceivably could recur;
>
> Whereas the President is to be commended for submission of a legislative package to Congress which is designed to implement a self-determination policy for American Indian people.

Statements made by several Indian leaders throughout the U.S. and during hearing testimony further compounded the growing lobbying efforts to pass the bill with as much power and genuine intent as possible. One statement did not fall on deaf ears and may have contributed to further limiting the power of the commission.

Vine Deloria Jr. made a series of speeches in support of the bill. He encouraged the commission to,

> Dig into the federal archives to uncover treaties and agreements made with Indians and to hold field hearings and investigate any governmental agencies that deal with Indians.
>
> Provide the opportunity to correct some of the wrongs and injustices that have occurred to the Indians during the last century.
>
> I have uncovered numerous treaties that no one knew existed because they were misfiled or not ratified once they reached Washington, despite the fact they

> were signed in good faith by both the government and the tribe in the field. The government appears to have stopped keeping records of treaties after 1860.

Although the words reflect quite accurately the mood of the Indians as well as some of the major sentiments of some of the legislators, a growing resentment among some congressmen against Indian issues began to exert a small influence over the voting. During House debate, some of the resentments were brought out by Congressman Gross and others. If the Congressmen could do nothing more than limit the length of the commission, reduce its funding resources, and stress the finality of its charter, they would serve their constituents.

Maybe it would be best here to summarize briefly the position of some of the conservative elements and their lobbying special interests. During the previous administration, large corporations and some smaller private investors were encouraged by the Secretary of the Interior to partake in the large lease land availability on Indian trust lands. To wit, through subtle and casual manipulation of tribal affairs, literally millions of acres of Indian land were leased to coal companies, uranium producers, oil and gas producers, large cattle ranchers, and in some cases private developers. Some of the land was literally taken out of trust deed ownership and given over to these non-Indians. To encourage this process further, as well as to appease some of the other private business interests who suffered due to Indian water and fishing rights, a policy of subtle termination through accelerated assimilation was devised. In some cases this policy took the form of overt coercive violence and special interest pressures by groups such as the Concerned Citizens for Civil Liberties and the Wyoming Patriots. These "non-official" policies resulted in great bloodshed throughout the Indian communities and great political pressure being brought to bear against avowed Indian supporters in Congress. It should be remembered that these efforts are ongoing today.

The American Indian Policy Review Commission became a reality by the Act of Congress on January 1, 1975. The final version of the bill included the smaller Commission membership, delineation of pay for the indian participants, and the authority for funding through the U.S Senate. As the transition from bill to act to Commission took place [illegible] hope was expressed by Abourezk for the work now ahead:

> The American Indian Policy Review Commission will begin its deliberations by setting the unique Federal status of American Indian tribes into a proper moral and legal perspective as was intended in the original treaties and the Constitution. We intend to compare and evaluate the policies, practices and bureaucratic administration which has diluted and distorted this nation's original pledge to our Native American citizens.
>
> So far as I am concerned, there is a lot wrong with the way America has treated her native people. We have wasted money without results, humiliated proud people and have generally put together a sorry record in the area of Indian affairs.
>
> If we do no less than seek to honor our original intentions of the Constitution, we will have succeeded. If we do not attempt to reorganize and correct a bicentennial record of administrative abrogation of sovereign tribal rights, we will have failed.
>
> Let us work together to recommend the establishment of a permanent legal relationship and effective trust responsibility under the Constitution for the American Indians and develop a report that can chart the next century of the Federal-Indian relationship.

The Commission began its first organizational meeting on March 5, 1975. It was at this meeting that subsequent major controversies became manifest for the first time. The controversies, or more accurately, the accompanying growing pains, developed in three general circumstances. In each case the problem was one of acceptance and compromise, which when undertaken behind the massive closed doors of executive sessions, impart a certain intangible anxiety in those witnessing this process. Throughout the brief history of the Commission, and following even up to today, the largest, most vocal dissatisfaction with its work and operation has been in regards to the issue of membership. Each of the three general problems stemmed from this issue. The question of who represented who, or better, who best represented the viewpoint of the American Indian, has become the single striking point for criticism of the Commission.

The first case involved the selection of the Executive Director. Many thought that Sam Deloria would have been the most obvious choice for the post. Indeed, even some of the Congressional members of the Commission placed his name in nomination. When selection of Ernest Stevens was made, a small but growing voice of disapproval became manifest. Although Stevens' credentials were never suspect, the delayed final approval and the recorded objection of some members of Sam Deloria kindled the spark of distrust. As with most political operations, especially those involved in Indian Affairs, one event seems to precipitate a whole chain of misfortune and dissatisfaction. In this case it was no different.

Abourezk had contacted Sam Deloria during the legislative phase of the Commission and asked him if he could serve as the director. Deloria expressed a certain unwillingness to move from New Mexico to Washington. He implied a general tone of disinvolvement also. Abourezk soon became convinced that Sam was not the right man for the job. This sentiment was discussed with the other members and, through executive session, a compromise was reached. Ernie Stevens was appointed to the post. In return for allowing Senator Abourezk to have this say, Senator Hatfield and Representatives Meeds and Steiger, both staunch supporters of Deloria, were allowed to carry more say in the selection of the Indian commissioners. Hence the beginning of the real nurturing of the forked tree.

The selection of the five Indian members of the Commission was, for all intents and purposes, performed outside of the normal meeting function of the Commission. It was done in the hallowed halls of Congress and in executive session. It was also performed on the telephone and with a very large degree of Indian community input. In the final tally some two hundred names were nominated through six Congressional members. Each Congressman had the task of evaluating, rejecting, prioritizing, interviewing, gaining corraborating support, and finally selecting their top choices. These ballots were then passed around and those names which showed up most significantly were selected. It would have been impossible to please everyone. It would certainly have been impossible to have selected a panel of just five Indians to fully represent the totality of views held by all American Indians. Further, the expressed requirements written into the bill to vaguely insure some input from the differing Native American communities tended to limit the scope of selection to individuals who were really multi-representational.

In the long run the five members selected did reflect certain essential qualities that were viewed to be most important to the legislators. There is no question that those chosen were, to varying degrees, assimilated to the non-Indian culture. The Congressional members were, as part of their design to have the Commission's findings accepted and ultimately written into law, interested in naming Indian spokespersons who could do the most effective possible job of lobbying the rest of Congress. Obviously those who had already had that sort of experience were very high on the list of nominees.In essence, the chosen Indians were, to some varying degree, familiar to and with the Congressional members making their selection.

A quick overview of the background of the selected Commissioners shows that there was a tendancy to select individuals who were experienced in Washington realities. Ada Deer had worked long and hard in Congress for the restoration of her own tribe, the Menominees, to Federal recognition. John Borbridge was generally acknowledged to be the most influential and articulate voice of the Tlingits and other Alaskan peoples. Louis Bruce, former Commissioner of Indian Affairs, had had long and extensive dealings with most of the Congressional members. He represented both the Mohawk and Sioux backgrounds. Adolph Dial was thought by most to be the most representative of the non-recognized tribes through his ceaseless campaigning for recognition and Federal support. Finally, Jake White Crow was considered well representative of many nations for his lobbying work for the Oklahoma peoples, and for the fact that he personally sought the position by intensive lobbying of his own.

Many fine Indian leaders were nominated for the Commission posts. It should be noted that none of Senator Abourezk's nominees were selected due to his compromise over Ernie Stevens. Three of the nominees were selected from the lists of Meeds, Hatfield, and Steiger. The staff felt that while the roles of the Commissioners would be a focal point, and would represent the broader statements of the Indian community, the real important work would be done by the task forces. Therefore, many of the nominees for the Commission posts were eventually selected as task force leaders and members. Before discussing that aspect, there still exists some matters of controversy regarding the five Indian Commissioners.

Shortly after the Indian Commission selection was made public, and it was learned that the selections were made in executive session, the National Tribal Chairmans Association (NTCA) filed suit in a Federal court to block the selection of the non-Congressional Commission members. The NTCA stated in their suit that the five Indians did not reflect the totality of views held by many Indian peoples, nor, more specifically, did they represent the important positions held by the NTCA. While this expressed a legitimate criticism of the Commission, the impetus for the suit and subsequent political manuevering should be brought to light.

The opposition of the NTCA was a complex issue, but it was centered in the anger some of its leadership had toward Senator Abourezk. They were upset that Abourezk had requested the NTCA be audited by the U.S. General Accounting Office (GAO). Abourezk believed that the NTCA's use of some $500,000, granted by the BIA for a study of the Federal-Indian relationship was essentially an attempt on the part of the BIA to buy the NTCA's support for the agency's continued lack of quality services and programs. The very nature of the AIPRC, especially as expressed in the aforementioned debate speeches, threatened the continuance of the BIA, at least in its present wasteful form. The BIA feared a highly critical Commission report would severely curtail their operations and possibly would put some bureaucrats out of secure jobs. The GAO never did audit the NTCA. But some NTCA members began to reexamine their own involvement with the organization. The Commission received many letters of support from tribal chairmen and councils throughout the United States expressing their lack of faith in NTCA in representing their real views.

The minor fact that both Borbridge and Deer were tribal chairpersons did not seem to satisfy the NTCA. However, the suit was ruled inappropriate by the Federal court, which stated that Congress, having plenary powers over all Indian affairs, was immune from question on the selection of Commission membership.

Another question regarding the Commission's five Indian members had to do with geographic selection. This was left out of the text of the bill for several reasons. Only three members could be selected from nationally recognized tribes; one member from an urban Indian community; and one member from a non-Federally recognized tribe. While limiting the selection to only three reservation members, a geographic requirement would, in and of itself, force a non-representation upon the Commission. Further, the United States could not very well be divided by geographic boundaries to include a representative segment of population and equivocal issues. To select members from the most prominent tribal groups, the Sioux and the Navajo for example, would reduce the broad representative base required by the Commission. Several executive session statements were made that to include a Navajo or a Sioux member would mean that all the Commissions would hear would be Sioux or Navajo views since those tribal groups seemed to think of themselves only. While this may have been an arrogant view on the part of legislators, it did reflect some degree of the threat of power that these two groups held, especially when matters of budget and reservation development were considered.

The selection of Indian task force members became a major issue during the Summer of 1975. Intensive lobbying efforts were made by all of the many organizations representing Indian interests throughout the U.S. Some 460 names were placed in nomination for the nine task forces, apportioned by the law. During Commission meetings, two of the task force areas were expanded, creating two additional task forces. Further, it was decided, in the best interest of the work that was required, that each task force should be aided by a task force specialist, upon whom the major administrative functions would be placed. This meant that out of the 460 or so nominees, forty-four persons were required. During the May 2nd meeting the Chairman appointed a task force selection committee. This task force, comprised of Representative Meeds and Commissioners Bruce and Dial, was charged with organizing the nominees into appropriate categories and preparing the final selection ballots.

Beginning in July and finally ending in September, the process of task force membership selection ran its course. The summer of 1975 witnessed increased militancy of Native Americans, which in turn strengthened the conservative reaction to any and all Indians who expressed their self determination beliefs. This pressure was brought to bear on some of the legislators, notably those who sought reelection that Fall. It is essential to remember that as the forked tree is affected by all elements of the world, so too are the sentiments and feelings of political people affected by pressures abounding in their constituency. As the conservative backlash began increasingly to take a firm hold, the self-determination and treaty claims forces was felt by some of the staff. Two avenues of approach were considered. One was that, the work of the Commission should produce several legislative proposals calling for specific changes in Federal policy to enable the Indians to gain a sense of self-determination. These legislative proposals could then be tabled or buried in the Congressional workload. The Indian constituency, it was felt, though highly vocal, could never amass enough support to enable the passage of such bills. The other position was that a second report, or a minority view, could be created which could to some degree nullify the work of the Commission in the all-important eyes of Congress. It would then behoove those who were politically vulnerable over the Indian issue to lobby for selection of task force members who could, at the right moment, assist in preparing the minority report.

Through the strong and concerted effort of Abourezk and his staff on both the Senate Select Committee of Indian Affairs and the AIPRC, the selection of task force personnel tended to reflect positions that sustained the continued growth of "traditional" Indian values and culture, at least in the way that those terms reflect the concern for real self-determination for individual tribes.

Matters of treaties, aboriginal rights, sovereignty, and continued survival were the real concerns of the task force membership. These ideas were apparent in the performance of their duties, and was expressed in the work they had been doing prior to their Commission service.

When the final selections became fully apparent, and the processes of task force organization were undertaken, a new movement developed to alter the intended growth of the tree. Due again to pressures placed on the Commission by outside circumstances, it became necessary to define carefully the roles and scope of inquiry of the individual task forces. This process produced a further limiting of the potential power to augment change in Federal policy. If the task forces were not allowed to bring their power of inquiry into focus on issues which were of immediate concern to all Native Americans, then it would be possible to quiet the overall impact of the final report. Through limiting of funding for hearings, and through the reduction of time to prepare full reports, the task forces could only investigate issues that could be studied with relative ease within the confines of meetings and staff-allotted time.

Another form of limitation placed upon the task forces, through pressure brought by the Commission, was restriction of crossover areas. It seems obvious when one investigates a certain issue that the surrounding framework which relates to that issue should also be examined in order to gain a wider perspective. You must walk all the way around the tree and climb in it or sit underneath it to know what must be known. Yet the restraints of time commitments and nagging trivial issues created situations for the task forces which made it possible to get into their work fully. The pressure to come up with something significant abetted the concerns of members and yet, although a really thorough investigation was called for by the charter, the time allotment and funding limitations would at best only provide cursory views leading to hasty and possibly unwise legislative proposals. The task forces could examine immediate concerns and issues of the day even while they were forced by charter, obligation, and goal to investigate both the historical perspective and the contemporary manifestation of present and future policy.

Other considerations weighed heavily in the minds of the Commissioners and task force leaders. If it was not possible to do the work they *must* do, then what could they realistically accomplish? Some members took the view that, if nothing else were done, at least holding hearings and getting in contact with as many people as possible would demonstrate a willingness on both the parts of the Commission and on the Native American community to strive for a sense of control over their own destinies. Several task forces did hold numerous hearings all across the United States. Others called representatives from Indian Country to testify before them. Both approaches served to demonstrate a national Indian awareness of the work of the Commission, while at the same time indicating to white conservative elements the seriousness of the threat of Indians gaining political power.

As the reports began to filter into the Commissioners offices from task forces, a view of political awareness by the general Indian population began to take hold. Here was a significant constituency, holding incredible natural resources, linked by a history of guilt and misrepresentation in the American people, beginning to manifest themselves as a political power. The potential was awesome when viewed from either the conservative or liberal positions. Sides were clearly being drawn as the 1976 campaign took hold in the minds of the legislators. Certain constituents were demanding that the Indians be suppressed in their demands for recognition and self-determination. It became imperative to some members that they must act to alter the task force reports. The minority report grew and took shape. It attempted to discredit, or at least misdirect, the impetus of the Indian self-determination movement. Task force demands to improve program services, and to reorganize the BIA and other agencies, were met with the old cry of taxpayer cost. Similarly, standards were waived to inhibit the access to legal status of land and treaty right's claims. Support for the conservative position grew and it began to form a policy of its own which could be disguised under the Commission scope. The question was raised if it would not be in the best interest of the Indians if the BIA and all support group programs were eliminated, thus forcing self-determination upon Native Americans. This would allow a policy of assimilation and termination of American Indian trust responsibility and status. Some of the minority rebuttal reports soon began to influence AIPRC proceedings in preparation of the Commission's final report. These reports did indeed support an elimination of the BIA as such, but they wanted Indians to be recognized as separate entities under the auspices of the State Department. A real split developed within the Commission.

This split affected the work of the task forces through demands to prepare the documents for publication hurridly. The task forces, already beleagered by time pressures, could not respond fully to the new challenge. Consequently they produced a final report that fell far short of the goal of directing the formulation of new Indian policy for the next century.

The fear of producing too litte too late became a reality for most of the Indian staff members in their attempts to cope with the changing political climate around them. The AIPRC, born of noble and necessary intent, nurtured through compromise and political fertilization, and living on the growing awareness of a significant Indian political power, finally came to rest as a forked tree on the plains, laying on its side without roots.

POLITICS AND THE AMERICAN INDIAN POLICY REVIEW COMMISSION

Donald A. Grinde, Jr.

Native Americans fear new legislation and rightly so. In the past century, all "new" Indian legislation has been designed to help solve the "Indian Problem." But much of the reform legislation, like the Dawes Act, the Indian Reorganization Act, the Indian Claims Commission Act, Public Law 280, the Indian Civil Rights Act of 1968 and others, has proved to be either disastrous or a sham. The American Indian Policy Review Commission (AIPRC) reports contain many positive recommendations, but all attempts to alter relationships with Indian people are two-edged swords. Politics enters the formulation of Indian policy at all levels and thus often clouds the proper course of action.

U.S. Indian policy is filled with political paradox. Starting with the Northwest Ordinance and its "utmost good faith clause" and then the case of President Andrew Jackson's disobeying a Supreme Court decision in *Worcester v. Georgia,* the history of U.S. Indian policy has been tragic.[1] The great tragedy has always been the land. Indians are unique among minorities because no other group has had its property systematically mismanaged by the federal government. Ironically, this fact is compounded by the realization that while Indians rank the lowest of any minority in practically every index of social welfare, they are, on a per capita basis, the wealthiest single group in the nation. Recent estimates of timber, land and minerals (coal, gas, uranium, lead and gypsum) ostensibly controlled by Indians totalled over sixty billion dollars. However, all but a tiny portion of this wealth finds its way into the hands of non-Indians who have amazing luck in obtaining beneficial arrangements from federal bureaucrats charged with finding new ways to develop Indian resources.[2]

It is to the credit of the framers of the AIPRC that it was charged to discover the causes of Indian poverty and discontent.[3] Initially,

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the Commission was viewed by most Indians as a welcome relief from the efforts of the Bureau of Indian Affairs (BIA) to cover up its abuses. From the start, though, politics seemed to nibble away at this seemingly noble gesture. For instance, Congressman Lloyd Meeds of Washington was the Commission's Vice Chairman, and he also was the prime sponsor and manager in the House of Representatives of the bill that set up the Commission's method of operation. Meeds was responsible, therefore, for the provision in the AIPRC that directed five of the eleven commissioners be Native Americans. Furthermore, he pushed through the provision that each of the eleven task forces have a majority of Indians. When the AIPRC made its recommendations, Meed remarked that it was inevitable that the Commissions report be "the product of one-sided advocacy in favor of American Indian tribes."[4] Apparently, Mr. Meeds saw no need to assume any responsibility for the legislation he supported.

In Meeds' dissent in the AIPRC final report, the inherent assumption is often that the interest of the American people and Indians are always at odds. He assumes that the pro-Indian majority recommendations of the AIPRC in treaty rights and tribal sovereignty are not only "pro-Indian" but necessarily "anti-white."[5] Although the Commission was conceived in the spirit of respect and mutual cooperation it appears that such statements fan the flames of racial mistrust and are very irresponsible and demagogic.

Engaging in politics themselves, the National Tribal Chairmen's Association (NTCA), being financially dependent on the BIA, sought to obtain a restraining order against the functioning of the Commission. The NTCA claimed that the AIPRC did not truly reflect or represent the Indian tribes.[6] Indeed, a look at the Indian members of the Commission demonstrates this fact clearly. The specific complaints were that the Native Americans chosen for these positions were not representative of the largest tribes, those with the most pressing issues (e.g. water rights) and Indian tribal suggestions were overlooked.[7] However, the NTCA was also aiding the BIA's attempts to stop any new policy reform.

Plainly, the nominating of Indians to sit on the AIPRC was a political determination made behind closed doors. The nominees that emerged from this process were considered "safe" as to raising questions that would trouble Congress. When names were submitted for the various task forces, Congressmen, Senators, and Indian commissioners lobbied back and forth for their favorites. While this may be within the allowable bounds of politics, the method of obtaining tribal nominations for task forces became a mere popularity contest. There is no evidence that the abilities and experience of candidates was discussed seriously. Indeed, a memorandum was sent, and tribes were left to make whatever nominations they wanted. The final choices between the six or more candidates for the task force positions were done without notification of the candidate's record, history, experience or commitments to Indian people.[8] How fair is it for Congress to set up commissions without adequate and efficient participation by Indian people?

Thus, the Commission began its life by establishing eleven task forces. Each was charged with such problems as treaty rights, education, health, economic development, alcoholism, and tribal government, to name a few. Instead of sending out recognized experts into the field to survey the conditions of Indians, the task forces held hearings across the nation and made vaguely worded promises concerning the radical recommendations they were intending to formulate once their reports were filed.[9]

Furthermore, the two major staff positions of the AIPRC, General Counsel and Executive Director, were filled by two former BIA employees. Was it coincidence or an oversight that the employees carefully avoided using the considerable subpoena powers of the AIPRC to investigate misrepresentation or fraud by federal employees? At times it seemed like the goal of the AIPRC staff was to create a new Indian superagency which would double or triple the present fiscal allocations for Indians. So the hope by some Indians that a truly new approach would emerge has been dashed. As a result, the reports and materials read like bureaucratese that has been spoon fed to Congress for the last generation. I should point out that this time the job has been done by Indians, for the most part. Many staff members and commissioners and task force members were already beholden to either the BIA or Senators and Congressmen with anti-Indian constituents.[10] In spite of these problems, the AIPRC final report did make some fine philosophical statements about the need for change in Indian affairs.

But there are no easy philosophical solutions in Indian affairs. The Department of Interior continues to manipulate the tribes for corporate interests. Treaty rights, statutes and Supreme Court decisions are routinely ignored by the Interior Department. This violation of Indian rights has deep historical roots. The AIPRC documented many such BIA misdeeds including:

1) Interfering with tribal elections and tribal roles;
2) Playing one tribe against another in competition for funding;
3) Failure to respond to requests for legal, technical, and financial assistance;

4) Entering into leases on behalf of a tribe without tribal approval;
5) Acting to diminish a tribe's sovereign powers and self-government;
6) Mismanagement of tribal assets and the withholding of information on tribal trust resources from the tribes;
7) Encouraging nepotism and telling tribal members to sell their land to qualify for welfare;
8) Failing to act on tribal requests for Secretarial approval of tribal constitutions, ordinances, resolutions and charters;
9) Obstructing tribal negotiations with federal agencies and discouraging tribes from contracting federal programs which would obviate BIA services; and
10) Distributing federal program monies in an arbitrary manner.[11]

These indictments were presented to the Commission by Indian complainants during the hearings. Not only were affidavits presented to demonstrate such capricious actions but also these allegations were substantiated.[12] Each of the indictments is a violation of treaty rights, federal and state statutes, and Supreme Court decisions. However, the traditional approach to such transgressions is that they are administrative weaknesses. But they should be subject to grand jury investigations and criminal indictment when needed. If some BIA officials went to jail for such offenses, they would be stopped. These indictments are as illegal as the Watergate offenses.

The BIA officials are not responsive to the people. Area directors have tremendous power and wield it often in opposition to the wishes of the local Indian community. BIA officials and area directors often simply take over the leadership of Indian people by simply making derogatory public statements or reporting data that is inaccurate but serves their own personal needs.[13] Often, protests over such manipulations go uninvestigated by Washington, D.C. officials.

Reform of Indian policy is fraught with pitfalls. The primary reason for this is that movements to help Indian people recrudesce every generation or so, and they have distinct positive and negative connotations. Following the publication of Helen Hunt Jackson's *A Century of Dishonor*, the infamous Dawes General Allotment Act emerged.[14] In 1928, the Meriam Report helped to push through changes in the delivery of health services and directed attention to the failures of Indian education.[15] The legislation that resulted was the Indian Reorganization Act which brought an end to allotment as well as some violations of Indian self-government.[16]

As the AIPRC states, Indians fear legislation. The fear is well founded. Spawned in politics and paternalism, new Indian legislation cures some previous wrongs but creates new ones. Almost all new Indian legislation corrects blatant misdeeds but also results in the further reduction of Indian self-determination.

The Dawes Act of 1887 was the culmination of a ten year debate on the future status of American Indians. But the Act was not just a simple change in the law. It touched all aspects of Indian-White relations in various ways. The Dawes Act clearly delineated the amount of land Indians would retain and how much the white society would acquire. It also changed the treaty relationship in many cases. It delegated specific powers to tribal governments and gave tribal individuals certain rights as well. The nature of the laws that Indians would be subjected to was defined. Finally, the Act also determined the path to American citizenship for Indians.[17] The major results of this legislation were the erosion of the Indian land base and less self-determination for Indian people.

By the 1920s, the economic results of this disastrous policy were only too apparent. Indian land had been sold to whites or leased and parcels were fragmented through complicated heirship procedures. Employment was practically nil. Farming and ranching on the reservation were not meeting Indian needs to survive. Thus in 1926, Lewis Meriam was commissioned to study Indian administration and Indian life by Secretary of the Interior Hubert Work. The report was honest and straightforward. It demonstrated that federal legislation and scant funds for programs had hampered rather than helped Native Americans. The Bureau of Indian Affairs was also found incapable of helping Indians with their economic, health, education, housing, and legal problems. The published Meriam Report of 1928 made several recommendations to change the state of Indian affairs, particularly in land, health, and education policies. The report advocated the improvement of Indian health and housing; children of elementary school age should be educated on the reservation; the erosion of the Indian land base through the Dawes Act was to stop; and increased funds should be made available to hire better people in the BIA. The report largely ignored industrial and agricultural development that would point to self-determination. Instead, it attached the symptoms of Indian problems.[18] It seemed less concerned about Indian rights and more concerned with making the bureaucratic machinery more effective.

In 1934, the Indian Reorganization Act (IRA) was passed, amid some fanfare, to provide for sweeping changes in Indian policies. The IRA consolidated and purchased more land; developed constitutional government on reservations; financed loans for tribal economic development; and encouraged day schools on the reservations. All this seemed to reform Indian policy and indeed did, in some instances.[19] However, changing the values and systems of administration as well as the actual delivery of services does not alter the underlying intent, which is to continue and thus ultimately change the way in which Indians do things.

In the case of the Indian Reorganization Act, tribes were encouraged to reorganize their governments and adopt new constitutions *subject to the approval of the Secretary of the Department of the Interior.* The rights and power of Indian nations exists independently from federal law. Thus, a law intended to buttress tribal government has often encroached upon tribal sovereignty. For instance, the Interior Department has denied, for many years, the right of a tribe to exercise jurisdiction over non-Indians even though there is no statute or court decisions to reinforce the BIA's position.[20] Thus, the motivation to control continues.

Even the most significant piece of legislation emerging just after World War II was manipulative. The Indian Claims Commission Act, which gave Native American communities the option to sue the U.S. government before a special commission, was established and structured with very little Indian input. Since 1855, there had been a United States Court of Claims which heard suits against the federal government, but tribal claims originating in treaties were not within the jurisdiction of the court. The result was that tribes, like foreign nations, had to obtain special bills from Congress to redress their treaty grievances. However, numerous Indian tribes did obtain special acts which enabled them to go before the U.S. Court of Claims and over one hundred suits were heard between the Civil War and 1946.[21]

The rationale to create the Indian Claims Commission was to cut down on the number of claims presented to each session of Congress. But the scope of the Indian Claims Commission was limited. The total sum of money to be awarded was set arbitrarily. No claim decision seemed to relate to another in any consistent manner. Tribes vied for a slice of the claims pie rather than any real standard of value being applied. Although Commissions are not supposed to be adversarial, the tribal lawyers and government lawyers created that atmosphere. Furthermore, tribes which were deprived of lands at $3 an acre in 1830 were paid that in 1950 dollars *without interest!* Often, the federal government squandered tribal monies without benefit to Indians, but this was not an allowable claim. The price for obtaining claims money in inflated dollars was high. Once a tribe accepted a claim settlement, it "forever (barred) any further claim or demand against the United States arising out of the matter involved in the controversy." The intent was to extinguish aboriginal title to U.S. lands. This was a rather high price to pay for a contrived redress of grievances.[22]

The final insult came with the appointment of former Senator Arthur Watkins, a lifelong enemy of Indian people, as Chief Commissioner of the Indian Claims Commission. Watkins did his best to ignore many claims and caused the process to go slowly. When asked why some claims were in court for over twenty years, Watkins replied that he needed new legal tools to use "against the Indians."[23]

The Indian Claims Commission led Indians into a legal structure determined by the Congress and Indians were forced to accept this way of doing business. Almost all the awards were in cash, when many tribes would have preferred to expand their land base. Few options were available to Indian people so control of the Indian continued even under the guise of belated "justice."

It is a well-known fact that Congress responded to the problem of law and order on the reservations by passing Public Law 280. This act provided for the transfer of assumed federal jurisdiction over the tribes to the states. Tribal consent was not sought or provided in this act which gave states the power to assume control over the tribes in the areas of crime and justice. Subsequently, the states took it on their own to extend further their jurisdiction over such things as hunting, trapping, fishing, and the taxation of reservation property. Public Law 280 specifically forbade such incursions, but violations were still allowed. Thus, Public Law 280 encroaches on tribal sovereignty and is a failure of federal policy.[24] It is an incursion upon tribal autonomy and violates the special relationship between the tribes and the U.S. government which excludes state jurisdiction. Plainly the act is based on the idea of the individual assimilation of Indians. For the most part modern Indian societies have not assimilated.

The Indian Civil Rights Act of 1968 has caused abuses as well. Tribal autonomy has been eroded through this act because the courts have assumed jurisdiction over election disputes, appointments, membership rights, and interpretations of tribal constitutions. Congress did not intend to make the federal courts interpreters of tribal law, but this has emerged as a problem.[25] As an aside, the state and federal courts sometimes recognize the tribal courts but often refuse to give full faith and credit to the ruling of tribal courts. Thus, this act has harmed instead of helped Indian people.

Similarly, the Indian Self-Determination and Educational Assistance Act of 1975 was supposed to strengthen tribal governments and to promote Indian education by increased funding. However, the federal government has abused Indian tribes and presumed authority not provided in the act. For example, the U.S. Office of Management and Budget has arbitrarily decided to use population formulas derived from 1970 census figures. The population statistics are grossly inaccurate and are further distorted by being seven years old. Administrative regulations dictated that the Indian service population should be restricted to Indians living on reservations. This compounds the problems of self-determination because many Indians are forced to reside off the reservation in nearby cities to gain employment.[26] Thus, attempts to strengthen the tribes are hampered by administrative regulations which penalize the tribal government for its off-reservation members.

Currently, Congress is being asked by the AIPRC to change Indian policy through its two-hundred and six recommendations. About fifty of the changes would require new legislation. The Congress will probably combine many of these changes into a few bills. What Native Americans fear most is the further erosion of tribal self-government. Historically, this emasculation can come through the legislation itself or through administrative interpretation.

Because of the political process, it seems that the key issues have been confronted in the collection of data through the hearings of the AIPRC, but the important elements of control or enforcement have been neglected. This lack of enforcement could easily cause major problems in Indian policy in the future if historical patterns persist. Two methods of control that the Commission did not address itself to are:

1) Submitting legislation to Indian tribes at the time that they are introduced in Congress; and
2) Framing a clear statutory process to monitor the Interior Department and the agencies with Indian-oriented programs.[27]

The failure of the AIPRC to grapple with these difficult issues suggests that vague promises and specific policy recommendations are of little use until Indians are included in the process and administrative caprice is curtailed.

By not submitting legislation to Indian tribes before they go to the Congress, the principle of self-determination is further eroded because Indians are dealt out of the legislative process. In all fairness, the AIPRC should have insisted that no legislation should pass Congress without discussion and Indian input. For instance, recognized Indian leaders (political and spiritual) should be encouraged to testify at hearings at government expense. Tribal referendums could be used on major issues.[28] Officials from states with large Indian populations regularly pressure their Congressional representatives for favorable legislation which often is anti-Indian. However, Indians have no such leverage in Congress. The State of Maine is a case in point. Maine's congressional delegation was instructed to attempt to kill pending Indian land claims court cases through an act of Congress.[29] Another recent case is the State of Washington's admonition to its representatives to void court decisions on Indian fishing rights and to attempt to expand state jurisdiction over Indians. Thus, Indians are faced with a dilemma. The Congress should grant Indians congressional representation or tribal referendums should be instituted so that Indians could veto the will of Congress.[30]

Without a clear legal process to monitor the Interior Department's caprice and the actions of other federal agencies, the problem of Indian self-determination is further compounded. Agencies serving Indians pass regulations and publish them in the *Federal Register*. After thirty days, those regulations have the force of law. Departments serving Indians have a long history of ignoring law and court decisions. These bureaucratic activities must be monitored and no administrative legislation should be passed unless Indian nations can respond to them.[31] The author is not talking about conferring or hearing Indian objections. The Indian nations must have the right to accept or reject any new legislation.

Although the AIPRC recommends the establishment of a Trust Council Authority, it is unclear whether this watchdog would be allowed to function properly. Certainly, the Trust Council Authority would be powerless to stop administrative abuses unless violations by federal bureaucrats are punishable by law.

In the final analysis, no area of Indian policy is now removed from political and administrative caprice. Indians are often powerless in the face of such arbitrary actions. Until Indians can revise and shape the whole spectrum of Indian policy, new legislation will be fraught with pitfalls. The AIPRC promises much but historically such promises have little meaning unless there is some way to insure that the intent of the law is followed. Essentially, humanitarian impulses for Indians in the last century have led not to liberation but to more social control. Until Indians are allowed true self-determination, Congress will place greater priority on making present and past policies work better through more control than on placing the direction of Indian society in Indian hands.

NOTES

1. *An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio, 1789,* and *Worcester v. The State of Georgia, Peters Report,* VI, 536-563.

2. See Vine DeLoria, Jr., "The American Indian," *Gallery* (November 1977).

3. Public Law 93-580, *93rd Congress,* S.J. Res. 133, January 2, 1975.

4. "Meeds' Dissent: No Merit," *Wassaja* (October 1977).

5. Meeds' Dissent, in "American Indian Policy Review Commission, *Final Report* (Washington: U.S. Government Printing Office, 1977), I, pp. 571-612.

6. "The American Indian Policy Review Commission," *Wassaja* (May 1977).

7. Rupert Costo and Jeanette Henry, *Indian Treaties: Two Centuries of Dishonor* (San Francisco: Indian Historian Press, 1977), pp. 189-90.

8. Costo and Henry, pp. 190-91.

9. DeLoria, "The American Indian."

10. Costo and Henry, pp. 204-205; and DeLoria, "The American Indian."

11. See *Official Report By: International Indian Treaty Council,* I, 7 (October 1977); Costo and Henry, pp. 183-184; AIPRC, *Final Report,* I and II.

12. The author remembers that as a member and leader of an urban Indian center we had a few weeks notice to formulate our opinions and then find funds to send a member to the nearest city to testify before AIPRC hearings.

13. "Pueblos . . . Protest Area Director Named by Gerard," *Wassaja* (May 1977).

14. See U.S., *Statutes at Large,* vol. 24, pp. 388-91.

15. Lewis Meriam, et al., *The Problem of Indian Administration* (Baltimore: Johns Hopkins Press, 1928).

16. U.S., *Statutes at Large,* vol. 48, pt. 1, pp. 984-88.

17. U.S., *Statutes at Large,* vol. 24, pp. 388-91.

18. Murray L. Wax, ed., *Indian Americans: Unity and Diversity* (Englewood Cliffs, NJ: Prentice-Hall, 1971), pp. 56-57, and Meriam.

19. See William T. Hagan, *American Indians* (Chicago: University of Chicago Press, 1961), Chap. 4.

20. Costo and Henry, p. 186.

21. Nancy O. Lurie, "The Indian Claims Commission Act," *Annals of the American Academy of Political dnd Social Sciences,* (May 1957): 56-70.

22. See U.S., *Statutes,* vol. 60, p. 1049.

23. Vine DeLoria, Jr., ed., *Of Utmost Good Faith* (New York: 1972), pp. 220-21.

24. Deloria, *Of Utmost Good Faith,* p. 337.

25. See U.S., *Statutes,* vol. 82, p. 77.

26. Costo and Henry, p. 222.

27. Costo and Henry, pp. 188-89; and *Deseret News* (October 23, 1976).

28. See, "An Attempt to Kill Indian Treaties," *Wassaja* (May 1977); and "The Continuing Denial of Our Existence," *Akwesasne Notes* (Summer 1977).

29. See Boston *Globe,* November 10, 1976, and October 31, 1976.

30. Vancouver *Columbian* (November 1976); and Costo and Henry, p. 188.

31. *Deseret News* (October 23, 1976); and Costo and Henry, P. 189.

INDIAN HEALTH, FEDERALLY OR TRIBALLY DETERMINED? HEALTH RECOMMENDATIONS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

Cecilia Gallerito

Introduction

The purpose of this paper is to set the issue of Indian health in an evolutionary perspective and to analyze the potential impact of the health recommendations of the American Indian Policy Review Commission.

Operational Factors that Affect Indian Health

Indian health status is synthesized from the interaction of many factors. The components are multi-dimensional and operate incongruently. The policies that form Indian health move on a continuum, both vertical and horizontal. Some policies strive to raise the level of health conditions of Indians, others work against improvement. Unilateral government intervention and cultural traditions create a situation that has stirred criticism from the groups of people who monitor Indian affairs.

Recently, a federally appointed task force was authorized to investigate the present conditions of Indian health. A set of recommendations were formulated to guide federal policy.

To understand the dimensional picture in which Indian health is situated, certain factors must be examined. These influencing variables are economics, population, education, government, and society. They are easily identified as components of a culture, but their actual impact is not easily discernible. A concise summary of each variable is discussed to highlight the dynamics that influence Indian culture.

Economics provides the tools for society to maintain itself or introduce change. Limits are imposed when scarcity of resources exist. Economics is a realm of control that mirrors the values of the group. Either people operate communally or for personal goals. Economics holds a strong rein on health resources and determines the distribution pattern of needed health care.

Population size creates a voice from the people. Obviously, the larger groups are heard over the diminutive segments of society. Nevertheless, the impact of population growth stimulates a reaction from the controlling elite. The younger and growing groups influence their share of health services

In order for a changing culture to adapt, it must be capable of learning new modes of conduct. Education is a means of adaptation. Education is culturally biased, but when it affects the lives of people, then those people need to share in this learning system.

The government is the ruling force which sets policy and has a pervasive effect on society. Supposedly, it is the conscience of the people. As health care reaches a critical stage, government intervention will be demanded.

The final factor is society itself. Despite the tapestry of people, dominant themes characterize the United States citizenry. The European influence is still evident in socity's values. Individual rights, ownership, and ethnocentrism underlie the laws and customs found in the United States. Health care reflects these values of the dominant Euro-American group and an alien health care system is imposed on people who profess communal and holistic concepts for their well-being.

Out of these five factors, the future of Indian health will be determined.

But besides these influencing variables, a seasoning ingredient — time — must be added. Time has matured the Indian's ability to adapt to the white man's world. The past, present, and future construct a framework where the mentioned variables interact. The past reveals a sad tale of broken agreements between the Indians and the government. The present is a time of reckoning where accountability has surfaced.[1] "Self-determination" is a motto Indians use to manage their own affairs. The future is set by today's actions, therefore, designing policies and effective methods of implementation are vital.

The History and Definition of the American Indian Policy Review Commission

Today's situation in the Indian community is the consequence of the health policies created fifty years ago. After one hundred and fifty years of Indian negotiations, the United States government decided that it was time to undertake a study of Indian affairs. The report that followed is popularly known as "The Meriam Report of 1928."[2] It is the precursor of today's American Indian Policy Review Commission study. The Meriam Report identified the life conditions of the Indian population, but subsequent implementation to improve the state of Indian affairs was lacking. The recommendations showed great merit, but what agency was committed to carrying them out? The report organized factual data to depict Indian life, but political obligations were excluded.[3]

Later, in 1975, another task force, comprised of Indian and non-Indian people, was appointed to survey Indian affairs. Task Force Six of the American Indian Policy Review Commission was delegated the responsibility of appraising Indian health. It was beset with difficulties due to the following reasons: the inability of members to devote full attention to their assignment, which produced frustration among the team specialists; the extreme geographic separation of task force members, which hindered communication and coordination; and the abbreviated time between appointment and operation, which did not permit the reassignment of each person's commitments.[4] Despite these handicaps, the final report was derived from a review of existing Indian studies, from a survey of state policies on Indian health, from public hearings from the Indian health hierarchy, from site visits at Indian Health Service facilities, from the interviews of tribal leaders and community health care representatives (grass-roots health providers), and from a canvas of Indian households. The recommendations formulated to improve the level of Indian health were presented to Congress, the Executive branch, and the Indian community.

Past

In reviewing the past, we cannot look at Indian health as an isolated entity; it is just as important to see the whole socio-political perspective. As "wards of the United States government" the regulation and control of the Indian lifestyle rested with the federal government, who represented the viable forces in America.

Unfortunately, the federal government disgraced itself by allowing the western expansion of settlers at the brutal loss of Indian lives. Federal documentation reports that many Indian tribes were relocated to the Indian territory of Oklahoma.[5] Further, the concept of land ownership was anathema to Indian tribal groups. The tribe's only right to the land was the acknowledgement of use.[6] While the land was freely available to Indians, it provided the necessary subsistence and the culture remained intact. As long as Indians were able to hunt and fish, their natural lifestyle provided an immunity to disease and sickness.

The Indians shared their "primitive" medicine with America's pioneers when illnesses plagued their journey westward.[7] Indians were adept in medicinal herbs and were knowledgeable in heat treatment, purgatives, enemas, cauterizations, bone setting, splints, sutures, and poultices.[8]

As expansion crept westward, the federal policies of Indian removal (1825-1841),[9] reservation creation (1850-1886), and land division (1887) reduced the land occupied by Indian tribes. Indian landholdings shrunk from 155, 632, 312 acres in 1881 to 77,865,373 acres in 1900.[10] Since cultural life was land-oriented, many Indians were seriously effected. The gathering of Indian food was curtailed, religious pilgrimages for propitiation were restricted, and the search for medicinal herbs and roots was limited. At this time, U.S. military doctors held the responsibility of monitoring disease among the Indians (in order to protect the white settlers). The extent of medical assistance was surveillance rather than any salubrious service.

It is a well documented fact that after contact with both the white man from Europe and the black man from Africa, communicable diseases periodically raged rampant among the Indians. This detriment almost extinguished the indigenous population in America.[11] The Indian population, during the age of America's discovery, was estimated to exceed one million and could go as high as twelve million.[12] By 1900, however, the estimation dropped approximately 237,196, which is the lowest tally of Indians in the United States.[13] Thus the small numbers of Indians never represented a voting force in the political arena of Congress. Consequently, up until the 1920's, federal policy slowly tried to erode the remaining cultural identity of the Indians. Landholdings, citizenship, and assimilation were areas of contention between the Indian tribes and the government.

When the situation looked the worst, two occurrences provided a different tone in Indian policy: Publication of the Lewis Meriam report in 1928 and the appointment of John Collier as Commissioner of Indian Affairs. The 1928 Meriam Report (already discussed above) singled out general factors having an overall impact on Indian health status: 1) environment — faulty housing, lack of water, lack of adequate shelter; 2) food — inadequate food sources for reservation bound Indians and the children attending boarding schools; 3) drugs — alcohol and the use of peyote for religious therapeutic effects which was interpreted as causing addictive behavior; and 4) racial status — genetic inbreeding was suggested as a desirable consequence where the stock is strong and pure.[14] Of these factors, the latter was the only one that warranted immediate attention. Since the genetic fabric of the Indian was affected by new diseases, poor nutritional status, and lack of adequate medical care, the result is a weakened race. Therefore, intermarriage may produce an inferior group of people; and it is a situation that needs quick action.

The report listed the following recommendations:

1) Prevention programs to control endemic communicable diseases.
2) Hospitals designed as community facilities to serve both Indians and non-Indians in one vicinity.
3) Child health programs aimed to improve the conditions in Indian boarding schools.
4) Nursing education for Indian girls since their temperament is particularly adapted to that type of work. (The state licensing board soon after raised their nursing preparatory standards. Since Indian education was substandard, adequate or minimal preparation was unavailable.)[15]

In retrospect, the Meriam Report initiated an awareness of Indian conditions and nudged the moral conscience of the country. It served to bring Indian data together, organize it, and present it in a thorough account.[16] Despite the appearance of this report, however, changes were not apparent until the 1930s and 1940s. This delay was probably due to the weak economic balance of the country. Nevertheless, the report surfaced important information and the federal government began to re-examine its affiliation with Indian tribes.

The real impetus for government re-appraisal arose out of the efforts of the newly appointed Commissioner of Indian Affairs in 1933: John Collier. Among some reformers Collier was a conservative, but he was an independent thinker as well who chose to ignore the privileged social class that he inherited. Collier envisioned an Indian renaissance that would bring about a new consciousness where individuals would rediscover their meaning as members of a specific group.[17] An evaluative account credits Collier's administration with the following five major changes in the government's Indian policy:

> 1) The Indian Reorganization Act of 1934, which increased Indian land by 2,100,000 acres.
>
> 2) The attack on problems of public conservation — land, soil, water, and vegetation.
>
> 3) An over-all endeavor to increase Indian employment.
>
> 4) Stoppage of Indian land losses and restoration of some of the lands which had been lost earlier.
>
> 5) A shift in educational goals from white-collar to agrarian ideals, from routine grammar school to community school ideals, and, from a ban on native Indian culture to its encouragement and utilization.[18]

Collier's achievements were timely but one critic states that Collier imposed his idealistic notions upon a "reluctant Indian population."[19] Actually, Indians were ready for social improvement but they were hesitant to allow someone else to determine their own progress. This resistance is evident in the veto action of the Navajo tribe when asked to ratify their acceptance of the Indian Reorganization Act created by Collier.[20]

In the area of education, the major impediments stemmed from the Indian-hating attitudes of the nineteenth century.[21] The influence of Westerners upon their political constituents in Congress hindered educational appropriations to Indian tribes. Legally, numerous treaties were negotiated which had educational provisions; few materialized. Western legislators predominantly led the opposition to defer formal training among Indians. One of the rationalizations was that education would allow the Indian to combat white interests more intelligently. Financial incentives motivated support for the establishment of an Indian school, but once frontier educators sensed that their jobs would be jeopardized by government-educated Indians, they withdrew their support.[22]

Up until the 1930s, the majority of Indian schools were operated by two institutions: 1) mission and private schools, and 2) federal schools. Throughout most of the nineteenth century, church groups operated most Indian schools. After 1890 until the 1930s, the federal government dominated the Indian's educational system.[23]

The government's Indian policy reflected the attitude of "civilizing the savage." This opened the door for religious groups who used the opportunity to "christianize" the red heathens.[24] The government subsidized these christian oases in the wilderness and the church's influence in Indian affairs grew very strong.

The aim of the educational process was to introduce civilized mannerisms to the Indians. The goal was best achieved by teaching such practical arts as housekeeping and sewing to the girls and the manual arts of blacksmithing and carpentry to the boys.[25] Vocational training to domesticate the Indian persisted through the early part of the twentieth century.[26]

"Civilizing the savage" was tenaciously held by the people of the past. But contrary to the seething resentment of the encroaching settlers, Easterners depicted the Indian in a romantic aura. Many traveled West to witness a noble, heroic warrior, only to find their expectations crushed when they found a defeated native.[27] The Easterner, usually free of ulterior motives, generally conceded to the claims of Indian injustices and supported legislation that attempted to rectify the situation.

Finally, about 1918, a short-lived event took place that was potentially detrimental to the health status of Indians. At the time the American Medical Association (AMA) sponsored a progressive movement to form a National Health Insurance program. Unfortunately, a reactionary group within the AMA mobilized and firmly upheld the position that the federal government was to remain outside the realm of personal health care. They suggested federal intervention was "un-American." This outcry demanded that health care was not an equal right but a commodity that society must buy.[28] The conservative sector within AMA was saying "hands off" to the government: If Congress was not going to provide health care services to the voting members of society, it should dubiously consider comprehensive health care for the Indians.

These attitudes held by the general populace and society's professional groups shaped the decision-making process of the past and kept Indian living conditions miserably inert.

Present

The injustices of the past have led to the emergence of accountability in Indian affairs. With the advent of accessible legal representation, Indian tribes have achieved a measure of justice. As a result, the Indian person participates as his own decision-maker in contemporary society.

The remaining land that Indian tribes hold either directly or in trust totals approximately a little over 50 million acres.[29] Much of this land renders profits to Indian tribes in terms of agriculture, livestock, minerals, forest, and water.[30] This generation's economic disputes revolve around land in relation to water rights, energy development, mineral resources, and taxation power. Indian land is considered a sovereign entity granted by Congress.[31] The term sovereign allows the tribes the following rights: to adopt and operate the government of their choice, to determine their own membership, to regulate the domestic relations of their members, and to make rules for the inheritance of property.[32] As long as the U.S. Supreme Court upholds favorable precedent, Indians will reap the benefits of their natural resources.

In the past when resources for the American economy was sufficient, little regard was held for the barren, desolate reservation land. But now that energy sources are diminishing, the exploration of new areas is under consideration. Some of these reserves are on Indian land.

Other than technological benefits, the federal government has contributed economic support through the efforts of the following agencies: Department of Health, Education and Welfare; Office of Economic Opportunity; Department of Commerce; Department of Housing and Urban Development; Department of Agriculture; Department of Interior, and Department of Labor.[33] These agencies have added employment opportunites, available housing, environmental protection, and community enrichment on and off the reservation. The underlying idea is to capitalize Indian productivity by bringing economic resources to Indian areas.[34] The results have both success and failure, but profits accrue to Indians in gaining the experience to learn ways for future improvements.

This experience is important in relation to Indian demography. The largest concentration of today's Indians reside in the Southwest, and growing numbers migrate to the urban areas. The flight to the city acts to reduce the economic pressure found on the reservation. But assumption of a population decline on the reservations is false because usually the extended (and expanded) family remains.

The 1960 U.S. Census estimated 552,220 American Indians living in the United States.[35] This figure was unanimously contested by Indian groups and others. The range varied from 500,000 to 1,500,000.[36] Then, in 1970, the U.S. Census estimate of the Indian population increased fifty-one percent to number 763,594.[37]

Another reason for the miscount of Indians is due to definition. The government has its theoretical definition of "Indian," which is based on the degree of Indian blood. This terminology is suited to the reservation areas but is unreliable in other localities.[38]

Indian demography is important also to education. Over the last ten years, remarkable gains in Indian education have been made. Although gaps in educational quality still exist, the Indian day schools are a great improvement over the Indian boarding schools where children were separated from home and family over long periods of time. In the year 1969-1970, the majority of the 200,000 Indian children were attending public schools. Three demonstration schools are in progress in New Mexico and Arizona; these schools are operated by Indian communities and subsidized by the federal government.[39]

A total of 10,055 Indians were enrolled in colleges and universities during 1970 which is a drastic increase from the previous ten years. The educational pool of prepared Indians has contributed greatly to the overall picture of Indian affairs.

Another important move in Indian education is the inclusion of cultural history within the curriculum of schools attended by a majority of Indian students. The Indian is given a more truthful account of the facts.

An additional trend is the incorporation of college preparatory courses into the curriculum for Indian students. As mentioned earlier, many Indian students were usually ushered into the vocational fields.

As well as the customary English classes, reservation schools included tribal languages with other formal subjects. In the past if an Indian child spoke his native tongue he would incur a punishment from the teacher. Fortunately this practice has disappeared as cultural language gains positive recognition.

Another major advancement is in tribal government. Through President Richard Nixon's recognition of Indian "self-determination," Indian leadership has served as the voice of the Indian people. Federal policy affirmed the individual Indian right to choose the path they would follow.[40] This announcement turned over the melting pot theory and gave the Indian people the freedom to guide their own destiny. By governing themselves, Indians gained the knowledge and skill to administer their laws.

A recent opposition to Indian advancements, however, has originated in the House of Representatives. An anti-Indian bill was introduced by a Washington state legislator and titled, "Native American Equal Opportunity Act." This cleverly named bill seeks to nullify all past Indian treaties.[41] This is a bold example of treachery that still exists in the United States. Most congressional leaders denounced the bill and stated that no one is taking it seriously. But the Indian groups, who have learned that any threat must be met, have demonstrated against it. During the summer of 1978, a political protest march crossed the United States.

Today's society seems to be more tolerant of cultural differences and is allowing this attitude to pervade throughout the system. A growing number of consumers are re-evaluating the "throw away" society and reaching out for values that teach they are a society of people rather than expendible replacements. Technology has abused the nature of man only because people have relinquished their control to big businesses. As society becomes more aware of the environment and of the uniqueness of man, the demand for human resourcefulness will return.

The Indian is caught in this web of social chaos. Some find solitude in their traditions, others try to redefine a meaningful world in modern society, and a few just give up and refuse to participate in change.

Future

The Indian has the power to rise above the inequities of the past and to establish an enduring presence. The future is filled with potential in terms of people and resources to negotiate and ensure an ecological balance. In the past, the Indian shared his knowledge; this concept should be part of the future.

The Indian's survival has always depended on the land and the future will follow suit. As the scarcity for land and resources grows in the United States, the Indian's land will increase in desirability and value. Possession of resources will prepare the American Indian for the future only if wisdom and foresight guide his decisions.

This is important, for the present rate of Indian population increase is four times the dominant society. The future Indian population will be a younger group of people with more demands for social benefits. With better exposure to educational and health opportunities, a strong resource will develop among Indian people to meet the rising need of manpower requirements in the Indian communities.

As for education, the outlook is for total autonomy of schools located on tribal land by Indian people. Already this step has been taken by the more affluent tribes who have the income to support their own school system. The policy of forced assimilation in Indian schools is a dead issue also and the future concern is to integrate the cultural values of the various tribes into the curriculum. Also, the thrust of bilingual education programs will help the Indian-speaking kindergarten child easily make the cultural transition from life in one world to an interaction in two worlds. As well as understanding his own culture without adverse stigmas, it is hoped that the Indian child will "learn the best of both worlds" and use this knowledge to improve his well-being and those of others.

Tomorrow's Indian self-rule will benefit from today's experiences, but only through political group effort will the advancements be safe. Development and stability need to be insured by effective tribal management. It is doubtful if total independence will be achieved by all tribal groups so maintaining diplomatic ties with the federal and state governments will continue to serve tribal interests. Also, the threats of tribal dissolution by the avaricious mentality needs to be monitored. A trustful relationship can prevail only if political maneuverings are studied assiduously.

As the factors interact and respond to the changes in our environment, hopefully, people will join together to survive the changes. Unfortunately, if individualism and greed supersede, the past vices that almost destroyed the Indian will resurrect and become man's own demise.

The American Indian Policy Review Commission in Its Own Perspective

In assessing the scope of the American Indian Policy Review Commission (AIPRC) findings, the identified problems are right on target. The report is comprehensive. Subjective interpretations are few and overall comments are impressive.

Yet, one of the strong points brought out was the public's ignorance of the historical relationship of the United States with the Indian tribes and the lack of general awareness of the status of the American Indian in our society today.

Some of the recommendations follow along the lines of the Meriam Report. For example, the following points were repeated: providing a therapeutic environment and making available nutritious food. But, more important, the main emphasis was on the allocation of sufficient funding to provide adequate health care for both the reservation and the urban Indian groups. A whole section was devoted to the health problems of urban Indians. It was recommended that the urban Indians receive the same level and quality of health care provided to their reservation counterparts.

Another critical point stated that the urban Indian health care facilities should be developed so that they will be culturally acceptable to the Indians who utilize them. Hopefully this statement will stimulate some consideration on traditional practices. It would be very easy for the government agencies to assume that urban Indians have assimilated or, at least, have divorced themselves from traditional medicine. The AIPRC report testifies that traditional Indian medicine is still practiced among Indian groups both reservation and urban. Exposing this area of Indian health presents a good opportunity for Indian people to consider the extent to which they want the government to regulate Indian medicine. In the delivery of health care, traditional health practices should be respected and positively received under circumstances that the patient chooses for him or herself.

Depending on how you interpret Indian treaties, an Indian would say that the notion of cooperation has always been on the Indian's side. Since Indians shared their resources in the past, it is within reason that Indian groups should receive their supply of health assets. Direct mention was given to the education of Indian people in the spectrum of health occupations in order to carry out the goals of Indian self-determination, which is a giant step from the earlier recommendation that mentioned only the nursing vocation. But, even more important now is the future socio-political climate which will determine the extent to which the federal government will allow and help Indian groups to fulfill their own health needs. The concern is not on what has been lacking, but rather on what to do next and how. This point brings us to the future perspective of the AIPRC recommendations.

A federal bureaucrat once said, "It is better to move in the right direction, however slow and awkward, than not to move at all." The question becomes, "What is the right direction?" The first step of problem identification has been accomplished through the AIPRC report, and the method of implementation needs to follow. We might ask ourselves what are the elements required to transform the recommendations into reality? If you look at the Indian population, which has been estimated to be just under one million, you will realize that the Indian tribal groups do not have a strong voting block. But, even small numbers can be mobilized to develop the potential to render the kinds of health benefits that are needed. One way of mobilization is to increase Indian manpower in terms of health professionals who will use their talents and skills to become effective advocates. This objective on a community level also implies giving support in time and effort in order to create a strong voice for the Indian community backing the health leaders. Too many times Indians fight internally, using up energy which could be directed to obtain health improvements. This is not to say that we should not criticize or disagree with people and their ideas, but rather we should avoid sidetracking the issues and prevent the arguments from creating unnecessary differences. Problems are solved in many ways and if the real health issues are kept in mind, Indians will become better problem-solvers. Health improvements will be achieved only through group action.

Next, the positive features of implementation, such as the organized Indian health boards, Indian community clinics, and Indian Health Services (IHS), should be examined. These organizations have Indians and non-Indians who understand the situation and can participate within the structure and, given the proper support from the tribal groups, many things can be accomplished. Taking control of the situation and making the right decisions will produce favorable results.

Another aspect is utilizing the socio-political events of today to support Indian goals. For example, during the 1960s there was a demand for health as an individaul right and, as a consequence, neighborhood health clinics were formed. This event increased the accessibility to health care services for the lower income groups of people.

One last point to emphasize is the Indian health organization itself. Regardless of how a person interprets national health insurance, the implications will be serious. There is a wide range of opinions about the results. Some Indian people state that national health insurance will remove the burden of an Indian health organization as a distinct group; others envision an Indian health unit within the organization. Some people even hope that the tribes will assume responsibility for the health care of their own people. Whatever, the final decision, the deciding factor will be whether Indian leaders in health will be able to preserve the health values that most Indian people were raised with and to formulate the types of health plans that correspond with the Indian lifestyles now and in the future.

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SUGGESTIONS FOR PRIORITY ALCOHOL AND DRUG ABUSE RESEARCH: A COMMENT ON THE RECOMMENDATIONS OF TASK FORCE ELEVEN OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

Susan Guyette

This paper seeks to expand upon the findings of Task Force Eleven of the American Indian Policy Review Commission through the suggestion of areas for needed research. It is commendable that a separate task force was created to deal with the issues concerning alcohol and drug abuse, for this inquiry constitutes one of the first steps of the decade toward conducting an assessment by Indian people.

Although alcoholism is often regarded as a high priority, if not the leading socioeconomic problem, the final report of the American Indian Policy Review Commission devotes one page to the topic and omits the mention of drug abuse except in passing. Yet if "in the first three months of 1974 alone, the number of drug abuse cases in Indian mental health programs jumped by almost 50%"[1] a signal is at hand to recognize the importance of this form of substance abuse.

In particular, in assessing the effect of substance abuse, it is important to show the interrelatedness of alcoholism and education, employment, health, criminality, and mental health. Nearly all Indian people are affected by alcoholism personally or through a family member. Some of the specific findings of Task Force Eleven are discussed below.

1) The relationship between health, criminality, and alcoholism is clearly demonstrated. For example, the incidence of cirrhosis of the liver has increased 184% from 1955 to 1973, resulting in a rate of 4.4 times higher than the U.S. rate.

The increase of suicide for the same time period is 106%, for a rate 1.8 times higher than the U.S. rate. And the alcoholism death rate for Indian people is 4.3 to 5.5 times higher than the U.S. rate[2]. Reports from the U.S. Indian Health Service indicate that of motor vehicle injuries, 30% are alcohol related, 46% of suicide attempts are alcohol related, and 38% of battered child cases are alcohol related.[3] These elevated rates contrast with the prevalent debate among researchers as to whether or not alcohol use constitutes a *problem* in Indian communities. The high incidence of alcohol-related arrests is emphasized by the task force, with the recommendation of the lessening of legal consequences for victimless charges.

2) The need for educational measures toward the prevention of substance abuse is mentioned in the task force report on alcoholism and drug abuse. As often happens in the struggle to support Indian programs, educational efforts are presently caught between the funding sources of the U.S. Office of Education and the Office of Indian Education; each office delegates responsibility to the other. The American Indian and Alaskan Native Program of the National Institute on Alcoholism and Alcohol Abuse (NIAAA) is funded to support treatment and rehabilitation programs, rather than prevention. The importance of prevention and educational measures cannot be too strongly emphasized, for substance abuse by an individual affects not only that individual but also a network of family and friends. Those persons interacting with the substance abuser are also in need of counsel on effective ways of relating to the abuser and preventing this relating from interference with personal functioning. In communities where alcoholism reaches epidemic proportions, 70% to 90% of community members use alcohol.

Educational approaches to deal with the stereotyped images of the Indian alcoholic are necessary. Youth often drink because drinking is the expected social activity or way of dealing with stress. Rather than fitting into a statistical probability defined by researchers, the Indian alcoholic could have alternatives through culturally appropriate treatment. The cultural acceptance of alcoholism as a way of life perpetuates the alcoholism cycle.

The interrelated problems of employment and alcoholism are mentioned briefly by Task Force Eleven. Even though a referral mechanism is supposed to exist within Indian manpower programs funded through Title III, Section 302 of the Comprehensive Employment and Training Act (CETA), it should be added that counselors are generally not trained to work with the alcoholic employee. Educational measures as part of an orientation program, counselor training, and alcoholism sensitive follow-up procedures are necessary to reach unemployed or under-employed alcohol abusers or family members of such persons.

Prior research on alcoholism is not examined by Task Force Eleven, other than a bibliographical appendix. The several ways of considering the causal issue of Indian alcoholism have included physiological studies, approaches regarding alcohol use as not a problem, and consideration as a problem of society at large. Due to time limitations, a discussion of the some two hundred studies on Indian alcoholism is not possible here. Several reviews of the literature discuss and compare these studies.[5] The one point that is relevant to this discussion is the lack of research conducted on treatment methodologies. When Indian authors mention that the present state of research on alcoholism is non-productive in Indian society, this is the issue being addressed.[6] Culturally appropriate treatment methods must be developed if the devastating effects of acculturative stress are to be alleviated. One example of culturally appropriate research is the examining of the Native American Church and peyote use in the group, ceremonial context. Conclusions of several researchers[7] indicate that the freeing of usually repressed emotions are carefully channeled into ego-strengthening directions, through the supportiveness of the participating group as well as the peyote use.

> Although a few people use peyote for religious purposes outside of meetings, this is an uncommon practice and they seldom do so alone. The whole spirit of the religion seems best characterized as communion — with God and with other men. Meetings are experienced as a time of being close and growing closer to one another. It is acceptable and expected that if someone in a meeting expresses a strong fëeling, the others present feel it with him and tell him so. If there is a tendancy to lose old features of one's identity, there is an equally strong tendency to acquire stronger identity as a member of the group. As a member of the church, each person is assured of his own significance and of group support for his own needs to be self-assertive in the outside world. The outside world — particularly the world of non-Indians — is seen as difficult but livable, and members expect to be able to cope with it.[8]

This treatment method has recently received recognition by non-Indian researchers for its effectiveness in the treatment of alcoholism.[9] The effectiveness has been long ago recognized by Indian people of several tribes.

Task Force Eleven does suggest certain recommendations for research, stated as follows: "An important objective of Task Force 11 is to delineate the role of alcohol in the life of American Indians, in particular to examine (1) Indian drinking patterns, (2) the effects of Indian alcoholism, (3) drug abuse problems, and finally determine the effectiveness of treatment programs for alcohol and drug abuse."[10]

> The following comments are offered:
>
> First, a plan for the assessment of treatment is not incorporated.
>
> Second, conducting survey work through the programming of NIAAA could prove to be a difficult task, according to the present status of data collection through NIAAA. Although Indian alcoholism programs are required to comply

> with "informatics", a computerized data collection system, the only Indian cultural variable recognized by NIAAA and included in this system is "tribe."
>
> Third, the plan presented for sampling, "the sampling would be of full probability design with a random systematic selection of households and enumeration of households in designated areas,"[11] is not realistic, since the location of all households is not known. Particularly in urban areas, obtaining a random sample is difficult. Migration between urban and rural or reservation areas adds another difficulty in sampling procedures of this type.
>
> Fourthly, a plan for the dissemination of research results is not presented. One reason that Indian programs have often not benefited from research, is the lack of dissemination in the past.

In other areas, minimum of attention is given by Task Force Eleven to drug abuse. Marijuana and sniffing are mentioned, with no reference to the extent of use. Hard drugs and poly-drug abuse, such as the now common practice of combining alcohol and barbiturates,[12] are topics not addressed. For this reason, the remainder of this discussion will focus on drug abuse.

Not only does there exist a paucity of published information regarding American Indians and drug abuse, but also most of the research findings appear to be of an epidemiological nature. Some of the drug abuse research which includes American Indians will be discussed and areas for needed research mentioned.

A somewhat dated study of drug use in Anchorage, Alaska[13] of students in grades six through twelve, included native peoples (Aleut, Eskimo, Indian). Relative to Blacks, Orientals, and Whites, the native respondents indicated a higher drug use and a lower alcohol use with a higher total percentage of users. Unfortunately, since the study did not delineate types of drug usage by race, this information is not readily available on native youth.

Another comparison[14] between White and American Indian youth attending four high schools in the vicinity of Wyoming's Wind River Reservation, indicated that differences exist between White and Indian youth (primarily of Arapahoe and Shoshone tribes), in attitudes toward drug use. Of the sample of White and American Indian youth, 46.6% of the Indian respondents were reported to approve of drug use as compared to 24.6% of White respondents. Although a higher percentage of Indian than White youth stated that they had tried marijuana, and 25.8% of Indian youth as compared to 10.2% of White youth began using marijuana at age 13 or younger, the frequency of continued marijuana use by those respondents who had tried marijuana did not differ by group. As to use of other drugs, 28.8% of Indians had used drugs other than marijuana as compared to 11.5% of Whites. The study concluded that the Indian youth studied have more favorable attitudes toward marijuana and other drug use than do White youth from the same area and that Indian youth are more likely to try both marijuana and other drugs than White youth.

A study on the sniffing of gasoline[15] among children in a Pueblo village reported that 62% of the 72 children between the ages of six to twelve, when questioned, replied that they had sniffed gasoline deliberately for its effect at least once. As to differentiation of use by sex, 75% of the boys and 50% of the girls sniffed. Of those who sniffed, 59% of the boys and 33% of the girls had sniffed more than once. It would be interesting to know of the drug use patterns of those children in later years, with experimentation occurring at such an early age.

Of the research located on American Indian drug abuse, it appears that largely descriptive epidemiological studies of adolescents have been conducted. In a survey underway and thusfar conducted among American Indians in a California penal institution[16] we have found that of those interviewed, 62% used prior to incarceration a combination of opiates, psychedelics, stimulants, and depressants, with some drug use by all inmates. All respondents' fathers used either drugs or alcohol — 43% used drugs, 67% used alcohol and 10% used both drugs and alcohol. All mothers were substance users also, with 50% having used drugs, 61% alcohol, and 33% both alcohol and drugs. Considering family members further, 73% of sisters and 62% of brothers used alcohol or drugs. This brief description underlines the necessity for attention to the problems of drug abuse. Reports from members of the American Indian Task Force on Drug Abuse,[17] a task force separate from the American Indian Policy Review Commission, indicate that a majority of male American Indian abusers of hard drugs began using in Vietnam.

> Drug abuse is a serious issue for many reasons:
>
> First, drug abuse is generally not recognized by Indian people as existing, due to the recent nature of drug abuse and to the lack of a cultural context for definition of the problem. Second, physical damage to the individual requires less use than alcohol; therefore, many young youth are experiencing irreversible damage. And third, potential for severe effects on the family and cultural continuity are imminent, due to the expenses of a drug habit and physical damage to the user.

A recent study on substance in cross-cultural perspective by Marlene DeRios and David Smith outlines a framework for exploring differential reception and perception cross-culturally of mind-altering substances. The authors found that in most non-

Western societies, drugs were used to serve specific cultural ends such as healing, divining the future, diagnosis, and protection. Some concluding statements from the discussion of drug use cross-culturally, of relevance to the present discussion are that: (1) When drugs are taken without a specific cultural definition and for the purposes of escape, there is a tendancy for the presence of Euro-american influences, cultural disorganization, problems of alienation, and alcoholism; and (2) secondly, the use of drugs for the reduction of personal anxiety occurs usually in the face of dire acculturative stresses.[18] Thus, in viewing drug use within a broader framework, the meaning of drug abuse correlates with use outside of the culturally approved or ceremonial pattern.

With the advent of such interdisciplinary studies, the future for research which could serve the needs of Indian people looks optimistic. Past research on topics relating to American Indian alcohol use has often suffered from the lack of Indian input and Indian researchers. Even the current trend of eliciting Indian input through advisory committees is not reaching the need for Indian expression of priorities on research topics, for the research grant is usually obtained before the committee is formed; therefore, the research topic is defined at the time that community rapport is sought. Past research, primarily epidemiological or causal, has reflected a lack of depth or tie to the people studied.

The kind of future research which would assist alcohol and drug abuse programs includes applied research on traditional approaches such as: counseling styles, traditional therapy, respect relationships, and methods of reducing acculturative stresses.[19] Hopefully, interdisciplinary research on treatment might produce methodologies which encourage, (1) the establishment of respect and trust relationships; (2) a renewal of feelings of group solidarity and belonging; (3) the reduction of alienation through a gained feeling of identity and cultural pride; and (4) the gained knowledge of choosing between cultural alternatives, thus enabling maintenance of a balanced lifestyle. Clearly, such methodologies could effectively combine Indian traditional therapies and Western methodologies.

Federal policy, through the structuring of funding for research, could guarantee Indian input. The increase in "Research and Demonstration" and "Research and Development" grants would ensure the cooperation of researchers and program staff throughout the development of the research design and the development of the program. This system promotes accountability and assures dissemination of research results to the communities studied. A degree of Indian review for funding is a measure to further the likelihood of research which can be applied for community use. And an increase in Indian faculty and Indian research units would further provide a system for the development of such research.[20]

In summary, the major recommendations of Task Force Eleven of the American Indian Policy Review Commission include, (1) the decriminalization of victimless alcohol-related offenses; (2) the creation of an Indian Division on Alcoholism, Alcohol, and other Drug Abuse within the governmental structure; and (3) the conducting of research on alcoholism and drug abuse. We have attempted to carry the recommendations on research a step further.

NOTES

1. American Indian Policy Review Commission, *Final Report* (Washington: U.S. Government Printing Office, 1977), p. 374.

2. American Indian Policy Review Commission, *Report on Alcohol and Drug Abuse* (Washington: U.S. Government Printing Office, 1977), p. 39; cited hereafter as *AIPRC-RADA*.

3. *AIPRC-RADA*, p. 40.

4. It should be noted that the statistics gathered from Indian Health Service records represent only one segment of the American Indian population seeking health care.

5. See, for example, T. Brod, "Alcoholism as a Mental Health Problem of Native Americans," *Archives of General Psychiatry* II (November 1975), and C. MacAndrew and R. Edgerton, *Drunken Comportment: A Social Explanation* (Chicago: Aldine Publishing. 1969).

6. A view of Indian community attitudes toward pure research and hasty "summertime" research is expressed by Vine Deloria, Jr., *Custer Died for Your Sins* (New York: Avon Books, 1969), pp. 83-104.

7. Articles and comments appearing in the *American Journal of Psychiatry* from 1971-73 debate the safety of peyote use, with conclusions by several M.D. contributors that use within American Indian ceremonial context is valuable for treatment purposes.

8. Robert L. Bergman, "Navajo Peyote Use: Its Apparent Safety", *American Journal of Psychiatry* 128(6), (1971): 51-55.

9. See, as examples, Bernard Albaugh and Philip Anderson, "Peyote in the Treatment of Alcoholism Among American Indians", *American Journal of Psychiatry* 131 (1974): 1247-50, and Kenneth Blum, Sanford Futterman, and Paul Pascarosa, "Peyote, A Potential Ethnopharmacologic Agent for Alcoholism and Other Drug Dependencies: Possible Biochemical Rationale," *Clinical Toxicology* 11 (1977): 459-72.

10. *AIPRC-RADA*, pp. xvi-xvii.

11. *AIPRC-RADA*, p. xix.

12. Personal communication with Margaret Baba Cooper, Director of United American Indian Involvement, Los Angeles, California, on patterns of polydrug use among American Indians on skid-row in Los Angeles.

13. Margaret Porter, Theodore A. Viera, Gary J. Kaplan, Jack Heesch, and Ardel Colyar, "Drug Use in Anchorage, Alaska", *Journal of the American Medical Association* 223 (1943): 657-64.

14. William Cockerham, Morris Forslund, Rolland Raboin, "Drug Use among White and American Indian High School Youth", *International Journal of Addictions*, 11 (1976): 209-20.

15. Arthur Kaufman, "Gasoline Sniffing Among Children in a Pueblo Indian Village", *Pediatrics* 51 (1973): 1060-64.

16. Survey conducted by Susan Guyette, American Indian Studies Center, UCLA, and Margaret Baba Cooper, Director, United American Indian Involvement, 1977.

17. Reports given by the American Indian Task Force on drug abuse at the National Conference on Drug Abuse, April 1978.

18. Marlene DeRios and David Smith, "Drug Use and Abuse in Cross-cultural Perspective", *Human Organization* 36 (1977): 14-21.

19. For example, a research and demonstration project — the Mother Earth Drug Rehabilitation Program, conducted by United American Indian Involvement of Los Angeles and by the author — currently addresses counseling styles and acculturative stresses.

20. Such research units are valuable in offering technical assistance to non-Indian researchers, and in training Indian researchers.

TASK FORCE ELEVEN OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION: A DEVELOPMENTAL OVERVIEW

Margaret Baba Cooper

The original intent of the ten task forces initially developed did not address the issues of alcohol and drug abuse as a separate problem meriting a task force of its own. Originally, the alcohol and drug problem was to be part of Task Force Six: Health Issues Concerning Native Alaskans and American Indians.

After much pressing concern on the part of the National Indian Board on Alcohol and Drug Abuse (an organization whose constituents consist of the American Indian alcoholism programs in the United States), the American Indian Policy Review Commission responded to the request by developing Task Force Eleven. It was intended that this task force would indeed speak to and address the American Indian and Alaskan Native alcohol and drug abuse problem. The original task force members' plan included contacting the people in the American Indian communities by mail. This particular method of obtaining alcohol and drug data proved to be ineffective. From its initiation, Task Force Eleven began to be confronted by many difficulties in implementing an effective way of reaching the Indian communities.

Additionally, Task Force Eleven had a later start up date than the other task forces, which impaired it from being more effective in developmental and planning stages. Some original task force members resigned due to commitments not being met. Another unfortunate event that proved to be a drastic set back was the death of a member, whose main responsibility included the technical writing for the final report. Consequently, a replacement person, chosen at the last moment, had a limited amount of knowledge of the Indian and Alaskan alcohol and drug problem.

Therefore, the final analysis of the task force did not have the impact and focus needed to make a final report that would emphasize the magnitude of the problem.

As mentioned in the report, the field of Alaskan and American Indian alcohol treatment is in its formative stages with approximately one hundred and sixty Indian alcohol programs in existence. The final report to the American Indian Policy Review Commission lacks pertinent information as to where these programs are geographically located and what treatment methodology is being implemented in their system.

A wealth of valuable data is laying dormant in Indian country. Special attention should have been directed to programs by site visits. The planning stages of Task Force Eleven did not reflect this. It was at a later date, near the end of the task force venture, that members did in fact hold community hearings with emphasis on service providers in the field of Indian alcohol abuse. An early method to obtain information and statistics should have been developed that would take into account: 1) service; 2) number of recipients receiving services; 3) analysis of treatment methodology being used; 4) recidivism rates; 5) employee background; 6) training available as needed; and 7) program expansion.

The Indian Desk for the National Institute on Alcoholism and Alcohol Abuse is staffed by three members whose entire responsibility is to provide advocacy, direction and policy to the one hundred and sixty alcohol programs. These people are to commended for their efforts; however, their effectiveness in terms of training, program evaluation and technical assistance is limited due to a heavy program caseload and a lack of funds available to develop needed services. The lack of technical assistance has led to programmatic difficulties. For example, the responsibility to develop internal evaluation procedures in relation to the effectiveness of these funded programs lies essentially with the programs. Due to a lack of funds available through the Indian Desk for training services, the programs are on their own without technical assistance and expertise. Programs may use outside consultant services that have little or inadequate knowledge of the Indian and federal relationship, the relationship with the funding agency, and the scope of the alcohol problem in general. How are we to determine the current success of a great national attempt at the grass roots level to determine our total effectiveness in terms of the people? A method to assess programmatic short comings is needed before steps can be taken to correct them.

To date there are no criteria or set standards for Indian programs to relate or comply with to help them become more efficient and productive service providers. Clearly, we need common criteria for systematic evaluation that programmatic staff can understand and implement. The selection of the task force committee should have addressed these issues by accepting people whose areas of expertise covered the total magnitude of alcoholism and drug problems: past, present, future, people, and programmatic methods.

The total concept of the American Indian and Alaskan Native alcoholism and drug abuse problem is of such a negative magnitude in our country today, that it is distressful when a year later task force members, members of the Indian Desk, and the National Indian Board on Alcoholism and Drug Abuse do not know what the status is of those recommendations made in the final report to Congress. Are past efforts to be futile? Was valid information disseminated to local levels of the Indian community informing them of the feedback on the final report to Congress, or are efforts and dreams never to be realized?

The task force did not emphasize the enormity of a growing drug problem due to the emphasis placed on alcoholism and alcohol abuse. Prevention is another unaddressed topic. The National Institute on Drug Abuse is not in the frontier of the Indian drug field, as suggested in the report. Its direction is research oriented, and technical assistance for developing community programs is not readily available. This assistance can be compared to the National Institute on Alcoholism and Alcohol Abuse whose efforts and exceptions can be complimented, as evidenced by the funding of one hundred and sixty or more Indian alcoholism programs.

In conclusion, Task Force Eleven did have some excellent recommendations that should be responded to by mandate from Congress. Hopefully, future research efforts will address treatment needs and the increasing problems of drug and polydrug use. Most importantly, a system should now be developed to disseminate future research results to the Native Alaskan and American Indian people in all community programs. This would help reduce the sometimes exploitative research efforts and provide greatly increased service to the American and Alaskan Indian alcohol and drug abusers.

SUMMARY AND CRITIQUE OF THE REPORT ON INDIAN EDUCATION OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

Grayson Noley

Summary

The implied purpose of the American Indian Policy Review Commission (AIPRC) report on Indian Education was to review federal education policies as they regard Native American people. The results of this review had the potential to provide an understanding of the rationale for the manner in which federal policies were developed and administered and to describe the present status of education as it concerns Native Americans. A stated primary objective was to solicit opinions from native parents, educators, administrators, etc., as these views did not surface during the AIPRC review of documents.[1]

Specific issues to which the education task force addressed itself in the review of historical and contemporary documents centered around the following:

1) A historical review of the federal relationships with Indian tribes;
2) A review and evaluation of the manner and extent to which federal agencies have implemented the federal role;
3) A review and analysis of the manner in which Indian tribes and communities have been included or excluded from the flow of federal services;
4) An exploration of alternative representative and service entities to insure maximum participation of Indian people in national policy formation and program development; and
5) An analysis of how findings must be incorporated into existing laws, policies, and procedures to insure effectuation of the purposes of the AIPRC.[2]

According to the report the education task force "attempted to delineate the interweaving of past policies and practices and present needs and concerns of Indian Education."[3] This was viewed as important to the task of defining the contexts within which policy regarding educational services was developed.

The methods by which data were collected appear to have been varied. The techniques included:

1) Public hearings;
2) Site visits to off- and on-reservation boarding and day schools;
3) Interviews with various officials representing federal, state, and tribal organizations;
4) Attendance at various meetings including conventions and seminars;
5) Utilization of data compiled by two of the other Task Forces involved in the AIPRC effort;
6) A review of both historical and contemporary documents;
7) A survey of state Departments of Education;
8) Utilization of AIPRC contracted studies as well as a review of state policy and financial practices; and
9) Utilization of a series of "special studies."[4]

Conclusions which were reached as a result of the field activity were not surprising. They could be categorized as a general dissatisfaction with nearly every aspect of education as it now occurs for Native American people. These are reflections of the attitudes gained through testimony and a limited amount of empirical data.

There are conclusions by the AIPRC, however, which are more compelling. These include the following:

1) That policy concerning Indian education had two thrusts — isolation and assimilation. This is to say that the government intent was to isolate children from their native environs and then strip them of their culture. This was found to be a consistent aim of federal policy.
2) That education was used as a means for implementing political policies (e.g., acquisition of land, though this procedure was not developed in the study).
3) That the federal government has been, and is lax, in establishing a perspicuous policy regarding the direction of federal education programs. Also, that states do not readily accept their responsibilities to educate Indian children.
4) That the available statistical data is inconsistent from agency to agency.
5) That no federal policy or guideline exists which insures quality in programs offered by the government.

6) That educational leadership (federal) is fragmented with advisory committees not being adequately utilized.
7) That there is an absence of experience in Indian affairs among both Indian and non-Indian professionals who affect Indian education — this results in oversight and misunderstanding of Indian needs an concerns.
8) That there is a lack of trained personnel in Indian communities.[5]

The recommendations include the implementation of local control for Indian schools, revamping of present federal program thrusts, higher funding levels, attention to non-compensatory education needs, and better methods for data collection. For the long run they suggest a comprehensive education bill, clear policy guidelines, and a policy of support and financing for community control of all aspects of Native American education.

Critique

It is important to note that the act of criticism of a scholarly work is not a means of attacking the integrity, skill, or intelligence of the authors. It is, rather, a means of pointing out areas which clearly contribute to the existing knowledge and which, given a different plan of analysis or an alternative method of data collection, could have been more useful and productive. It also is an opportunity to analyze the findings to the extent that one might determine if the procedures utilized were equal to the task being approached. Finally, it is important to examine the implications of the study and point out its potential value as a tool for improving Native American education. It is with these general considerations in mind that this critique is approached.

By this time it should be apparent that the research project undertaken by the Education Task Force was broad in its intent and presented a good many difficulties in its accomplishment. Not the least of these difficulties was the need to provide a concise and coherent document which clearly delineated problems in Native American education. The researchers were compelled to utilize aspects of various types of research including historical, sociological, legal, economic, and political. The sheer volume of data in each of these areas appears nearly insurmountable but it had to be attacked. Finally, it was necessary to present the findings and recommendations in a logical and easily understood manner so that they would have utility in the future policy development of the federal government.

The data developed had to be, to the extent possible, empirical in its nature, yet sensitive to the particular nuances and variations found in this underdeveloped field of research. The historical data had to be analyzed within a contemporary as well as historical context. The legal data had to be analyzed in terms of both present and past political contexts; the social data had to reflect the same. This did indeed present problems to the task force, scheduled to complete its task in a short period of time with a limited staff.

In view of the enormousness of the job, the task force which undertook to conduct the study is to be commended for its extreme bravery.

For the purpose of providing order, the remainder of this commentary is arranged in the order of the specific issues as defined in the summary of this paper. Preceding that order, however, will be a comment on the methodological procedures utilized. A general summary will conclude the present work.

Methodology

As previously indicated, the study conducted by the Education Task Force had to utilize a combination of different types of research methods. This requirement meant that data collection procedures also had to be varied which led to the nine techniques listed in the Summary section of this paper. The techniques will be reviewed briefly.

The utilization of public hearings as a means of collecting impressions and attitudes for this type of investigation is an important procedure. Consistency or inconsistency in the statements given by local community residents can have important implications, particularly with respect to the manner in which federal education policy is perceived by those who are on the receiving end. In view of the fact that those who provided testimony can be categorized into one broad interest group (i.e., all Native Americans), somewhat more credibility can be assigned to the opinion data obtained.[6] However, it must be observed that such data must be treated cautiously when applied to conclusions which have federal policy implications. In the analysis of the opinions gathered, the researcher must be prepared to differentiate between opinions which have high emotional appeal and those which result from studied and informed background information. Failure to do this could result in conclusions based only on popular appeal, excluding other opinions which may also be important but not considered by as many people.[7] A careful review of the opinion data collected would seem to indicate that some expressions of need, which appear to have derived from studied sources, have been neglected. This is not to say that the conclusions reached were incorrect or unrepresentative; only that they were, perhaps, incomplete.

Observation techniques utilized by the task force conducting this study had the potential of providing sound and, perhaps, previously, uncovered data. However, it is not apparent that the site visits were extensive or organized with clearly defined data collection goals. The report provides "impressions" which probably could have been ascertained by reviewing previously developed data. This kind of review, in fact, was done and, except for the "impressions," it provided information for the bulk of the report on off-reservation boarding schools.[8]

The survey of state departments of education, while generating some interesting responses, was not sufficiently analyzed. Responses were simply summarized. The questions themselves appeared to lack a central focus although some were of a nature which might have generated an interesting analysis of state department attitudes.

Data given in the *State Policy and Finance Study* all resulted from a review of secondary sources but did provide basic statistical information regarding Native American student distribution as well as a limited amount of financial information. Although the age of some of the data was in excess of five years, a more thorough analysis might have made conclusions much more meaningful.

Other data collection techniques utilized by the Education Task Force included the utilization of contracted study reports and a series of "special studies." These reports and studies utilized their own data collection procedures but appear to have relied heavily on the public hearings. Another source of data was the existing literature, both published and unpublished and both historical and contemporary.

Finally, historical methods were utilized to provide a chronology of important events in Indian education. Little analysis was applied in this section and as a consequence the history told is only slightly different than that which has been told countless other times by various authors. However, even though much of the chronology is similar to that which appeared in the Kennedy report, there is an attempt to provide other, more comprehensive historical data on Indian education.

All in all, the planned data collection procedures seemed, on the surface, to be sound. However, it appears that, for whatever reason,they were not carried through to their real potential of providing new data for analysis. When all is said and done, it appears that most of the data collected were from public hearings and secondary literature sources. The conclusions found in various sections of the *Report on Indian Education* will bear out this contention.

Though some of the information contained in the *Report* has been touched on or alluded to it is now time to turn our attention to the specific issues identified by the task force as being the focus of their research. The first of these issues is the history of Indian education.

The Historical Review

The historical review at the beginning of the study provided a good deal of promise as it was a departure from the usual "first school for Indians in Cuba" declaration. Unfortunately, the promise, generated by the heading "The Indian Period — B.C. to 1492," was more promise than reality. The analysis of pre-Columbian Indian education does not really give adequate credit to the system which obviously existed and which served to provide a basis for the transmission and growth of a body of knowledge that was responsible for the development of many viable Native American societies. It is unfortunate that the discussion of an early Indian education system has to be placed in the context of contemporary American structures. We undoubtedly lose much of the meaning in the translation.

For example, the report describes the native educational process as *not* being highly structured but dependent upon parents, relatives, and tribal elders for implementation. On the latter one can agree, but it must be said that the structures of native education *were* reasonably well developed and can be shown to be so if discussed within the context of the needs of the societies which existed at the time. In view of the fact that most native nations were agrarian at the time of European discovery, and that there were social structures which demanded various skills, it is necessary to presume that these skills had to be taught in some manner.[9] It would be ridiculous, for example, to assume that those who farmed, practiced medicine, and achieved leadership roles, came upon these skills without some type of instruction. Some method of instruction had to exist and a careful review of ethnological data and discussions with traditional people living today will reveal much in this area. This should be done in order to enhance our present understanding of the traditions we hold so dear.

The question of curriculum, as another example, is a term synonymous with western education. It is not really a relevant area of discussion when one analyzes pre-Columbian Indian education systems. It implies a systematic method of instructional delivery associated with formal education systems as presently understood. It may, perhaps, be used as a point of reference but not as an effective tool for analyzing the cognitive development structures utilized by our ancestors. If it is used, then the analysis is limited because we would only be able to speak to issues as we presently know them to exist, thus foregoing the opportunity to discover new or forgotten structures.

Briefly then, the historical attempt regarding pre-Columbian education suffers from the same symptoms we formerly assigned to the work of non-Indian anthropologists and historians. It is much too general, is dangerously close to being superficial, and does not begin to describe the complexities of societal systems.

The review of policies affecting Native American education from precolonial times to 1970 is much more adequate. There are discrepancies, however, although they are likely the result of a reliance on a single-data source for the historical fact. This occurs in historical research when the product is hurried and not subjected to as close scrutiny as may be desired. When this happens we are subject to an historical presentation which contains a good deal more opinion stated as fact than is necessary.

For example, it is not realistic to state that the French economic goals of hunting and trading were more congruent with the "Indian way." This was asserted to have resulted in a situation wherein the French did not attempt to alter native life styles to the degree attributed to other colonial powers. In reality, hunting and trading probably contributed as much as anything to the deterioration of native economics, skills, political independence, and ergo, the "Indian way." The establishment of European trade and the cooption of native people so that they became integral links in the system is, in fact, the classic example of colonialism.

It is clear that the Europeans (including the French) of the seventeenth and eighteenth centuries were intent upon exploiting the wealth of North America for their own benefit. The utilization of native people as the first link in this process was an example of the imposition of European economic practices on native socity. By implication it was also an example of the beginning of the imposition of a foreign culture on these same people. This is to say that as native people were called upon to provide Europeans with skins and native slaves, which were the principel articles of trade in the earliest part of the eighteenth century, a change in hunting customs had to occur. No longer were native people hunting to provide food for their people. Rather, they were now hunting to provide Europeans with skins, in exchange for which the native people received European-made trade goods. Realizing this, it can hardly be said that the French economic goals were congruent with the "Indian way." Hunting, particularly for the native nations of the southeastern portion of what is now the United States, became a part of the first "business" to develop in that area.[10]

Continuing with this line of thought, it might easily be argued that as European trade developed, Native American desires for foreign goods became more than just a matter of striking a good bargain. During the eighteenth century many foreign goods came to replace goods of native manufacture, a situation which contributed to a deterioration of native skills. That is, goods such as farm tools, utensils, cloth, and other items formerly manufactured by native people themselves, became easier to obtain through trade. That this contributed to a gradual decline in the use of some skills is reasonable to surmise as it appears to make sense that fewer and fewer people would continue to manufacture articles which were more easily purchased. As more and more articles were purchased and fewer people developed certain native manufacturing skills, the dependency on foreign trade became more demanding. This, coupled with wars fought against other native nations at the behest of colonial allies led to adjustments in native social systems which had the net effect of a weakened economic and political structure.

In summary, the "Indian way" was indeed changed, even by the French. In reality, their "goal" of hunting and trade was no different from the aspirations of other competing European powers in the early eighteenth century. If there was a difference, it was only that they were less adept at the process of colonialism than the British but, perhaps, more so than the Spanish.

Generally, the review of other historical developments is quite informative providing detailed descriptions of occurrences such as the missionary involvement in education and government attempts at solving its own problems in the administration of Indian affairs during the administration of Ulysses S. Grant. The principle shortcoming here is the lack of a thorough analysis of various actions. Limited analyses are attempted although depth of understanding is neither sought or achieved. This is an important omission as an understanding of a rationality of choices made from available alternatives could provide us with more specific data which could possibly have implications for present times.

It should also be pointed out that the report occasionally provides slightly inaccurate or misleading data. A quick look at the treaties with education stipulations, as an example, has at least one rather glaring error. It fails to list the Cherokee Treaty of 1819 which is significant because it is the first to specifically provide funds for the support of *schools*. Obviously other, earlier treaties refer to the provision of instruction in some manner but government support of schools, which already were being established, is important to note.[11] While this may seem to be a minor omission, one assumes that major research may eventually be used as a major resource. The presence of minor discrepancies, such as in this case, lessens the value of the use of this material as such a resource.

Another statement, only slightly misleading, appears in the discussion of "Grant's Peace Policy." This statement asserts that the Board of Indian Commissioners, appointed by Grant as a means of obtaining advice and assistance in upgrading the administration of Indian Affairs, "*hired* various agents of high Christian character." In actuality the Board had no real authority to "hire" but did provide for the nomination of "Indian agents" by various protestant denominations and organizations which had become located among various native nations. The distinction made here is that though the agents nominated by the participating Christian organizations were apparently usually hired, the congressional authorization did not give that power to the Board of Indian Commissioners.[12] Again, this is a minor point but one which as led to some confusion in the past wherein some people have come to believe that certain religious groups were "assigned" native areas as their exclusive domain. Indeed, some of the missionary groups at the time also assumed that this was the case. Subsequent disputes between religious organizations over this issue contributed to the ultimate demise of this system.[13]

Finally, more general comments on the history section must include mention of sections or statements which are obviously opinion. Though some portions provide thorough documentary support, a principle shortcoming is the presence of evaluative opinion.

Opinion, without supporting documentation in historical work does not provide the reader with sufficient substance upon which credibility might be built. This is not to say that logical speculation has no place in history writing; only that the speculation must indeed be logical. The speculation, in order to be reasonable, must stem from a series of interlocking steps which lead directly to the conclusion. Unsupported opinion, on the other hand, offers no such connecting steps and therefore lacks credibility.

To summarize this section of the critique it is reiterated that overall, the review is informative, if on occasion given to reliance on single, sometimes biased and unanalyzed sources. As an analytic document, it leaves much to be desired. For basic information about the history of Native American education, it may be used cautiously.

Federal Agencies

The review and evaluation of federal agencies focused principally on the U.S. Office of Education (USOE) and the Bureau of Indian Affairs (BIA). Regarding the U.S. Office of Education, the report attempts to illustrate the funds which are provided for the benefit of native people or that are attracted by their presence. It is not entirely clear that this objective was met. The data would have been more meaningful if the methods for arriving at the listed figures which are given as "Indian funds" from a variety of different USOE agencies were more clearly delineated. However, due to the method utilized in acquiring this data further delineation would have been difficult at best.

This section is useful in that it denotes particular considerations not accounted for in USOE agencies. An example of this is that legislative enactments for which native people are eligible determine this eligibility through terms such as disadvantaged, potential dropout, etc. The report indicates that this is a particular disadvantage due to the fact that the context of needs also exists in areas other than culture and languages. This appears to be a somewhat hasty conclusion, although it is understood that agency regulations can be restrictive to the extent that reaching the root of a problem is practically impossible. This is to say that many times local programmatic functions are predetermined by federal regulations, limiting local initiatives in problem solving.

This section also points out a need for trained professionals in various fields both by reporting field testimony and a review of a limited number of Native American program applications. Again, however, this portion suffers due to a lack of analysis and documentation of the data presented.

Finally, this is the section which states the absence of an "agency-wide policy that advocates services to all Indian people." This particular point *is* discussed analytically and is quite rational in its criticism. The criticism, beyond the lack of a policy, is that the agencies are working with little or no understanding of native needs. This was a good argument but should have been developed more thoroughly. As it stands, due to a lack of documentation, it is merely that — an argument.

As for the Bureau of Indian Affairs and its role in Indian education the report begins with a discussion of the confusing array of definitions of the term "Indian." Interestingly, there is no conclusion or suggested resolution of this matter. The point of a confused government in this regard, however, is well taken.

The report provides an analytic view of the Bureau's organizational structure and illustrates the unfortunate lack of line authority from the central office to education officers in the area offices. All in all, it can be said that this section provides an excellent review of what the Bureau of Indian Affairs is supposed to do in various areas of educational endeavor. Much of the information was, of course, provided by the Bureau itself; consequently one can hardly expect that it would be analytical, objective, or unimpressive.

The conclusions for this section centered around a criticism of the Bureau's lack of initiative in the creation of policy activities and programs. Additionally, criticism appears stating that the Bureau has been pursuing a policy of moving Indians into public schools as an unwritten goal.

These and other criticisms appear to be slightly unwarranted due to the dearth of analysis and documentation presented. Though evidences may have been presented, the depth of analysis was not sufficient to make a clear connection to the criticism offered. The evidence does illustrate that the Bureau was not meeting needs in many areas but this was not shown to be a result of a lack of *initiative* on their part. Obviously, other explanations are also possible. One does not argue with the data or what was stated as findings, but with the lack of an adequate analysis which clearly leads to the conclusions as stated.

The Flow of Federal Services

The issue of the flow of federal services, with regard to the participation of Native American communities, is not specifically analyzed in any particular section of the *Report on Indian Education.* It is possible, however, to draw implications from each of the sections although it must be made clear that this is done cautiously.

The review of federal agencies (USOE and BIA) do not reveal that Native American communities have any real input in the development of programs which purport to serve their needs. There are, however, important exceptions to this. The Bureau of Indian Affairs, it is pointed out, has cooperated with native communities in limited instances by contracting with local communities for the delivery of educational programs. The extent to which this is done, however, is not outlined with the specific information in this area coming from a speech given by former Commissioner of the Bureau of Indian Affairs, Morris Thompson.

Local initiative is accommodated by the U.S. Office of Education/Office of Indian Education through the system of awarding grants for local education programs to be operated by local education agencies and other public and private organizations. This and the potential utilization of the National Advisory Council on Indian Education is not discussed in detail and therefore one cannot draw conclusions about the extent of Native American involvement in the flow of federal services.

Other commentary about the lack of Native American participation in the development and implementation of federal services is found in the report on public hearings. The diversity of needs presented in the various hearings provide reasonably clear evidence that local concerns were having difficulty reaching policy making levels. This particular aspect of the hearing data was not exploited, however, and as a consequence, no analysis of local participation in the flow of federal services can be found.

Although "a review and analysis of the manner in which Indian tribes and communities" participate in the flow of federal services was stated to be a principle area of investigation, it did not occur. As pointed out, much information can be drawn from implications of specific areas which *are* discussed, but it is unfortunate that the opportunity to carry out this task was missed.

Alternative Entities

Aside from the new organizations described in the section on "Proposed Legislation," there is only one other discussion of an alternative entity. The entities described are, (1) National Indian Education Commission, (2) National Program for Indian Education, (3) Indian Educational Service Centers, and (4) National Trust Fund for Indian Education.

Although it is not clear that there is a connection between the above entities and the other discussions mentioned, it is possible that they were meant to be complementary. The description of an alternative service model in this discussion is limited and as a consequence leaves questions unanswered. A more thorough description is necessary before adequate commentary can be made regarding its viability.

Additionally, it is apparent that there was disagreement among Task Force members regarding the National Indian Education Commission. Its inclusion in the proposed legislation leads one to believe that politics internal to the Task Force itself played a major part in the reaching of conclusions. This, in turn, leads one to question the manner in which other research decisions were made. Obviously, in research which purports to be objective, strict measures must be pursued to permit conclusions to emerge through the processing of legitimate data. Emotions and politics, although not entirely avoidable should always be eliminated when they become apparent.

Incorporation of Findings into Policy

The manner in which the findings of this research project was to be translated into the development of new federal policy is apparently contained within proposed legislation entitled the "Indian Education Act of 1977." As already mentioned, however, there appears to have been some dissension among members of the Task Force regarding some portions of this proposition. In any case, the proposed legislation is apparently intended to be a comprehensive act covering many areas of education for Native Americans.

The proposed bill begins with a section listing "findings and declarations," which, presumably, are supported by the findings of the Education Task Force. Following these "findings and declarations," is a description of a government program which is apparently designed to replace much of what is now in existence. This program is contained principally within the entities listed in the previous subsection of the present work. All these entities are apparently controlled by the proposed National Indian Education Commission.

As a goal of the study was to provide an "analysis of how findings must be incorporated into existing laws, policies, and procedures," it is assumed that the proposed legislation is intended to do just that. Unfortunately, one is left to *presume* that the proposed activities would actually alleviate the existing problems as there is no analysis provided which explains why the suggested paradigms would be superior to others. This is to say that presuming the general acceptance of the identification of principle problems (e.g. local Indian control, curriculum, etc.), the matter of how to resolve the issues is still subject to discussion. As an example, there is no analysis showing why activities listed under the "National Program for Indian Education" would be the most proper approach in the delivery of educational programs on all levels. Likewise, analyses and rationales for other sections are also missing.

The point which should be made here is that if a clear connection exists between phenomena, which have been analyzed as problematic, and suggested paradigms, then this connection must be demonstrated. One cannot be expected to automatically presume that because each problem identified in the research is accommodated in some manner by a proposed model, that the problem is being addressed in the most efficient manner possible. In other words, as a paradigm is presented there should also be a presentation of alternative solutions with those selected for inclusion in the proposed model shown to be the most logical and likely to succeed. The selection decisions should, of course, be based on the best available data. None of this is found in the "Report on Indian Education."

Other Comments

Finally, some attention should be given to the section of "Special Studies." This section consists of a series of reports on specific subject areas or sample populations. General comments have been made about the Report on Off-Reservation Boarding Schools. Comments about the other reports may be summarized as follows.

Navajo Education: This is a summarization of the Task Force hearings held on the Navajo Reservation. It is a well organized but brief description of the system presently operating, views on current issues and problems, and recommendations.

Non-Federally Recognized Indians: Consisting of a series of historical sketches of tribes which are not recognized by the federal government, this report, by its presence, points out that there are many people in the United States who claim to be Native American but are denied certain rights as such. Except for the manner in which this applies to educational opportunities, however, much of the argument offered here is misplaced and would more properly have been included in the report of the Task Force directly concerned with this issue.

Education on Selected Reservations: This report is rather general in nature and offers no real insight into any particular problem. The conclusions reached are similarly generalized and vague.

Community Controlled Schools: This report gives a brief but inclusive overview of the conditions and issues facing the existing Indian schools which are considered to be under local control. The report also provides an interesting comparative analysis of conditions utilizing an immigrant ethnic population as a means of explaining the need for close community involvement in the redevelopment and reform of existing social conditions. However, although the arguments presented are compelling one must recognize that the discussion engages more than just the concept of local control. It also includes a conceptualization of community education though the writer of that report missed an opportunity to utilize this concept to its full potential. This is to say that although its value is clearly pointed out in the comparative analysis, concluding remarks do not follow up to specify its applicability and appropriateness, or lack of such, for Native American education.

Early Higher Education: Provides an overview of the history of Native American higher education. The data presented sometimes have a tendency to be slightly misleading or inaccurate but this may be more a function of writing style than erroneous interpretation. Otherwise, the report is informative and serves a useful purpose as an overview.

All in all, the special studies section has questionable utility to the overall report. If the information contained in this section was deemed important it could have been more useful as a part of other presentatiions. As it stands, rather than contributing to the coherence of the full report, this section seems to detract from it.

General Summary

The primary weakness of the study conducted by the Education Task Force of the AIPRC was that it failed to develop, on its own, data specific to the project being undertaken. Possibly due to financial and/or time constraints, the study staff chose to rely on preexisting data for the most part, which they attempted to fit within their own framework. Unfortunately, this contributed to the development of a weak data base and an analytic structure difficult to ascertain. Therein lay a problem basic to the entire report. To elaborate, the overall structure of the study seemed to lack focus. It does not appear that the study followed any clearly established procedure from beginning to end. The report did not identify a conceptual framework through which data were processed and given coherence. This resulted in a loose format where a reader must struggle to determine a nexus between the data presented and the conclusions reached. Field hearing testimony is the only instance where one finds such a nexus.

Unfortunately, reliance on field testimony alone is insufficient when other data, more empirical in nature, could have been developed. In reality, the heavy reliance on public hearings as a source of data probably detracted from more systematic methods of developing information. A more systematic method would have produced more stable information and this, coupled with opinions taken in field testimony might have provided valuable insights to the status of Native American education.

As previously indicated, the historical section contains an interesting chronology of events but its value is limited because of its failure to provide an adequate analysis. Also, since most of the historical data is readily available elsewhere its inclusion in the Indian Education Report is merely a reiteration. The State Policy and Finance Study does provide food for thought by showing the relative lack of adequate financing for an extremely high percentage of school districts with significant Native American student enrollments. Although this particular section was not identified as a central issue in the beginning of the report, it turned out to be a particularly strong section in comparison with others.

In conclusion, it must be stated that the Report on Indian Education of the American Indian Policy Review Commission Final Report does not contribute significantly to the existing literature. Readers who are totally uninformed about Indian education may find some of the sections informative and interesting. Those who are informed, however, likely would be inclined to seek additional sources, particularly if they were in a position to advise on the development of future federal policy making in Indian education.

NOTES

1. American Indian Policy Review Commission, Task Force Five: Indian Education, *Report on Indian Education*, (Washington: U.S. Government Printing Office, 1976), p. 153. Cited hereafter as *AIPRC-IE.*
2. AIPRC-IE, p. 3.
3. *AIPRC-IE*, p. 4.
4. *AIPRC-IE*, pp. 4, 22-23, 133, 153, 173.
5. *AIPRC-IE*, pp. 7-10, 167-170. Other concluding statements may also be found at the ends of various subsections. However, these are generally representative of all given.
6. Herbert Hyman, *Survey Design and Analysis*, (New York: The Free Press, 1955), p. 339.

7. Hyman, p. 341.
8. *AIPRC-IE*, pp. 241-255.
9. Paul Radin, *The World of Primitive Man*, (New York: Henry Schuman, Inc., 1953), p. 13.
10. Verner W. Crane, *The Southern Frontier*, (Ann Arbor: The University of Michigan Press, 1964), p. 110.
11. Charles J. Kappler, ed., *Indian Affairs, Laws and Treaties*, Vol. II, (Washington: Government Printing Office, 1904), pp. 178-179.
12. Loring B. Priest, *Uncle Sam's Stepchildren*, (New Brunswick: Rutgers University Press, 1942), pp. 31-36.
13. Priest, pp. 31-36.

A CRITICAL REVIEW OF THE URBAN INDIAN TASK FORCE OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

David L. Beaulieu

I am very pleased to have been asked to comment on the Urban Indian Task Force of the American Indian Policy Review Commission.

After spending three years in Chicago, I have recently returned to Minnesota. During those three years, I was very heavily and closely involved with Chicago's American Indian community. I had experience in a very direct way with the Urban Indian Task Force of the American Indian Policy Review Commission prior to and during the task force hearings in Chicago.

In witnessing the task force's pursuit of its study function through the hearings and survey process, I was never convinced at any moment that any report of the task force would be reflective of the issues and concerns indigenous to Indian social experience in urban areas. After a thorough reading of the Urban Indian Task Force's final report, in preparation for my presentation, I must admit that such a judgement was not presumptuous on my part.

What may be highly presumptuous is the view of the task force, indeed the entire American Indian Policy Review Commission, that their study design and method of data collection, though very adequately described at the beginning of the report, was followed or indeed, if followed, was capable of detecting the issues and concerns of urban Indian people (much less capable of translating them into creative policy recommendations.)

It is the use of what seems to be legitimate and credible social science methodology, to lend an air of authenticity to false ideas and preconceived notions of urban Indian experience, which raises not only important political issues concerning the function of the

American Indian Policy Review Commission but also significant academic issues and concerns. These issues strike at the heart of what the originators of the concept of Indian Studies had in mind when in the late 1960s this concept confronted traditional university centered academic disciplines with the realities of their relationship to American Indian people, societies, and experience. Traditionally, academic disciplines have rendered Indian people and their human experience into objects of study — atomized pieces of data advancing and contributing to knowledge incumbent in western European cultural traditions. This is quite different than the creative advancement of knowledge within the context of Indian social and cultural experience.

We tend to think of urban American Indians as a new phenomenon, something that came about because of relocation during the 1950's. Although substantial numbers of American Indians moved to urban areas in the 1950's, most migrated to the cities without involvement in a government relocation program. And though urban experience may have been new to these particular individuals, it was not a new aspect, historically, of the range of possible social/environmental situations Indian people have experienced. There have always been Indians in urban areas. Indeed, most American cities, whether it be St. Paul, where I'm from, or Chicago, were originally Indian villages or Indian commercial centers, and have remained a major focus of Indian social and economic experience since these cities began.

When I was in Chicago, I listened to an older Winnebago man reminisce about his experience in Chicago when he was a young boy. He talked about how his family and other Winnebagos would come down from Wisconsin yearly, pitching their tents for three to four months in the forest preserves which still surround the city. While some people sold things in the city, others looked for part-time work. Always some people would stay to live in the city as the others returned to Wisconsin.

Another older Indian man from Winnebago, Nebraska, told me of how his father and other friends organized the Grand Council Fire organization in the city of Chicago in the 1920's. In commenting about the types of Indians who lived in Chicago at the turn of the century, he said there were three types of Indians: those Indians who associated with the Grand Coucil Fire, those who associated with the Society of American Indians, and those who pretended not to be Indian.

Just as Indians have had a long experience in urban areas, reservation Indians have had a long and at times unusual experience with some unique non-Indian characters produced by the urban experience.

I remember stories people from Lac du Flambeau would tell about their experience with Chicago gangsters such as John Dillinger. It seems that just as Lac de Flambeau people who lived and worked in the city liked to return to Flambeau from time to time, to get away from the city, gangsters also liked Flambeau and other northern reservations as a place to get away from the hassles of city life.

Whether it be Clement Beaulieu and other Ojibwes who used to travel from Minnesota to live and work in Chicago for a few months a year in the 1830's, or Pottawatomies from Michigan who still think of the land upon which Chicago was built as theirs, Chicago and many other urban centers in America have been since the very beginning of these cities a major focal point of Indian experience. Urban experience for American Indian people is simply not a new phenomenon even though the anthropologists tell us different.

Another fallacious view of urban Indians to considerable contrary evidence is the view that urban Indians are simply individuals who live and work in the city without community. The Chicago Indian community having close to 20,000 people representing ninety four different tribes is a community in all senses of the word. And it is distinctly an American Indian community. Indians in Chicago as other urban areas have created distinct communities with unique social, political structures and processes. They have a sense of identity as a community from a common historical understanding. This history, including all the interpretive fringes, functions as all history does to sustain the social, political structure of the community.

For example, I recently went to a ceremony at the Chicago American Indian Center in which an Indian flag was transferred from its original caretaker to the Winnebago tribe and the Winnebago Club. That Indian flag, constructed of forty nine eagle feathers each contributed by an Indian veteran of World War II, has been the symbol of community for Indians in Chicago ever since. It has been ceremoniously used and presented at every major community event including the annual Chicago American Indian pow-wow usually held around Thanksgiving time.

At the Chicago pow-wow it is not unusual when the announcer announces the tribal affiliations of the dancers to hear as many as four tribal affiliations mentioned for one person. For as long as Indians have been living in the cities, they have been interacting socially, inter-marrying, creating, and developing social and political structures within their communities in a constant ever-evolving creative and adaptive response to the urban environment. This is distinctly Indian by process and by result.

The Urban Indian Task Force significantly failed in its study by denying two fundamental realities of urban Indian experience: that that experience is not new, and that Indians have created distinct Indian communities within the cities. Because of this, the task force was incapable by design and method to detect the *meaning* of the issues and concerns of Indian people in urban areas. The issues and concerns of Indian people must be considered and studied within the realities and context of the social and cultural experiences of Indian people as Indian people in any particular community understand and comment on that experience.

Academically, the method and approach of the task force symbolizes the inability of traditional university centered disciplines to relevantly and meaningfully interpret Indian experience. The task force by design only sought to find out the issues and concerns of urban Indians, while what was most important to learn was the meaning of these issues and concerns within the context of the social and political realities of community life within any particular city. The determination of this "meaning" (fundamentally a political act) was left to the members of the task force who, being selected for other reasons not associated with understanding the urban Indian experience and being separated from the communities they are studying, perceived themselves capable of doing this.

It is not any unique observer of this process that can understand the political consequences of this method and approach. And we need not comment at this point, but in passing, on the impact of the philosophy that "experts" (Indians or not) are best suited to make decisions affecting local community interests in the concept of Indian self-government and self-determination.

The task force failed significantly also in its study because of the method selected. This method was never applied in a way which had any hope of guaranteeing the reliability and validity of any data collected. Indeed, according to a staff employee of the Urban Indian Task Force, the data collected from the Minneapolis hearings was never used or seen prior to the writing and publication of the final report.

I was present in Chicago before and after the task force held its hearings there. I testified before the task force and had seen and presently have all the correspondance of the task force sent to the Chicago community in preparation for the hearings. I would like to describe that process to you.

Without understanding the political structure and history of the Chicago Indian community, the task force selected one Indian person who was the director of an Indian organization in the city to be the community liaison person. It was through this person that information about the task force was to be transmitted to the community and a limited list of twenty-eight witnesses was to be developed. The general community reaction was automatic suspicion regarding the purpose of the task force and extreme concern about community access to the hearings.

This feeling and concern was heightened by the fact that the Chicago hearings were regional in character and witnesses from Michigan, Indiana, Wisconsin, and outstate Illinois were to be given the opportunity to address the task force and by the fact that originally the task force wasn't going to allow anyone to verbally testify without a written statement.

The prevailing belief among every person I met and talked with was that the hearings were nothing but a symbolic event, that the task force wasn't really interested in Chicago Indians at all.

Prior to the hearings, the net effect of the way the task force introduced itself to Chicago was that many people who fully knew the history and needs of Chicago's community were effectively kept from the hearings. The very few individuals who testified for the most part did so by virtue of their federally funded positions (created to solve the problems the task force was seeking to validate or to more efficiently address).

The greatest damage done to the established task force methodology was through a letter sent out prior to the hearings requesting that witnesses limit their testimony only to the topics listed in the letter, e.g. lack of adequate services to off-reservation Indians, lack of guidelines in federal housing, and lack of adequate medical facilitie[illegible] the letter stated that the task force already knew these were problems. I personally heard the chairman of the task force more than once cut off an Indian witness in mid-sentence informing him that the task force wasn't concerned about that kind of information and that if the person didn't have anything to say about the topics he would call for the next witness.

Finally, of course, it was no surprise to me to find that the final report was nothing more than a lengthy version of the original letter sent to the Chicago Indian community. The final report did include a nicely printed and neatly organized description of the study methodology utilized by the task force. This of course was not in the original letter.

Essentially what the task force says about urban Indians is that life in the city can be tough. Well, Indians knew that long before the task force ever decided to come to the cities. And outside of identifying known problems, the task force attempted to gather information about federal rules and regulations relative to the federal financing of a growing number of social service and education programs for urban Indians.

Because the Urban Indian Task Force denied the existence, vitality, and validity of urban Indian communities, it was unable to detect or be sensitive to the overriding fundamental issues relative to urban Indians. Whether or not to change a rule or regulation concerning some federal program for urban Indians is a different question than questioning generally the destructive impact of the rather recent and growing federalization of urban Indian communities caused by the artificial creation of extended federal institutions into urban Indian community life. To identify health problems, for example, for which federal monies could be used is a different issue than the conflict of jurisdiction between community-elected health boards in urban areas spending federal money to plan for the health care needs of urban Indians and the Department of Health, Education and Welfare program which created health service agencies to plan for the health care needs of all people in a region that includes urban Indians. The conflict of jurisdiction in the urban area partially is true for every federal program designed for American Indians. What about the conflict arising from federal funding of all Indian schools in urban areas and federal compelled desegregation of urban school districts? Though the State of Illinois has no Indian reservations, in those states such as Minnesota where the urban Indian population equals the reservation population, there is a growing issue relative to the increased political activity of urban Indians in state and local governmental forums as they represent statewide or tribal interests. To what extent should urban Indians interfere, by the nature and extent of their political activity, with tribal sovereignty and the relationship of tribal governments to state and local governments and the federal government?

Though I would not pretent here to suggest what those answers should be, I am sure that there *isn't* a tribal official or urban Indian leader or politician who doesn't understand the nature of these questions, or doesn't have very determined views about the issues out of which these questions originate.

When I recently read the summary report of the American Indian Policy Review Commission, dated April 4, 1978, which listed but a few bills introduced into Congress as a result of the work of the Commission, I had at the same time a computer print-out of all the bills, in summary form, introduced in Congress affecting

American Indians the same year. The summary of the work of the Commission was less than half the length of this paper. The computer print-out which listed hundreds of bills, stood, defying any careful reading, five inches tall on my desk.

The disparity between the original hopeful anticipation associated with the work of the Commission for creative and constructive policy recommendations and the reality of the conduct and productivity of the Commission begs some critical comments relative to the function of the Commission in contemporary national Indian affairs.

With considerable hindsight and no intention to criticize or render suspect the intentions or efforts of Commission members, I believe the Commission, in and of itself, and irrelevant of the essentially meaningless consideration of the merits of any of its particular reports, raises significant issues relevant to the construction of national Indian policy and the nature and scope of tribal self-government.

These issues of course are not easily detected by a myopic review of the work of the Commission but are clarified by placing the Commission in its proper historic context, in light of the intensity of general Indian political activity through the early 1970's, with an understanding of the nature and function of American social and institutional reform, and what is meant by the term Indian self-government.

The consistent historical response of American society in the face of political activity designed to seek fundamental change has been to reform internally the abusive aspects of existing institutions and agencies which physically determine the relationship of Indian communities to American society and tribal government to federal, state, and local governments. This process, of course, through giving the illusion of responsive change, defuses the political activity and support for those who would seek a fundamental positive restructuring of the legal and political basis of the relationship of Indian communities and tribal governments within the society. The net effect of internal social reform not only maintains the integrity and viability of the institutions and agencies of the society in accomplishing its fundamental goals and objectives in the "national interest," but strengthens also the overall pervasive impact of these institutions in Indian community life.

If the society reforms the abusive aspects of public education relative to American Indian youth through adding an Indian teacher or two, and through curriculum development relevant and sensitive to the Indian child, the net affect is to strengthen and broaden the pervasive impact of American public education on the life of the Indian child and of course the future of the Indian community. If by making public schools functional for Indian students as individuals, the graduation or achievement of these individuals is not automatically meaningful and relevant to the Indian community as a social/political entity. The "success" of an Indian person within any institution of American society is entirely different and at times an antagonistic issue to the creative development of community based and controlled institutions which grow out of and directly and uniquely relative to local tribal/community social-cultural experience. The grand illusion of reform is that the socially professional advancement of the individual of a particular community within institutions of the larger society facilitates locally defined and controlled development or adaptation.

There are two related aspects of social reform which have occurred in Indian affairs over the past decade which directly affect the nature and scope of tribal self-government: the development of a substantial number of Indian middle class professionals working in the "Indian Interest" within federal bureaucracies and agencies, and the federalization of Indian tribes and communities through the intrusion of extended federal agency bureaucracies under tribal "control" into those communities.

Over the last decade we have seen considerable growth in the numbers of Indian individuals who work for agencies of the federal government. For the most part their positions and professional careers are based and sustained upon the existence of identified social-economic problems within Indian communities. While having considerable influence in the development, construction, and implementation of federal Indian policy (relatively speaking) among Indians, they hold no elected or traditional role to represent legitimately the needs and interests of Indian communities or tribal governments.

Though there has always existed individuals working within federal and state government agencies who have always worked long and hard in the interests of Indian communities, my comments are not designed to criticize the effort or intention of any particular individual. However, collectively, as a group, they function, as Jesse Jackson once commented regarding the Black middle class, ultimately as "bottlenecks" to community development. In the case of tribal communities, Indian middle class bureaucrats collectively function as bottlenecks to the exercise of tribal self-government. Any casual reader of Felix Cohen's article written in 1949 on Indian self-government can understand the threat to this concept of self-government of the view, legitimized by the composition and mandate of the Commission and its staff, that experts, whether they be Indian or not, are best capable to make decisions in the interests of those communities and tribes directly affected by the decisions.

Lastly, over the last two decades there has been a considerable federalization of Indian communities, sustaining tribal bureaucracies which serve as a major employment pool and source of financial mobility within the community or into federal and state governmental agencies. This creation of an artificial economy must beg very specific questions about the entire course of federally financed tribal community development. For example, to what extent will and can Indian Manpower Programs funded by the federal government have any impact on employment without major change in the economic structure of reservations? To what extent can tribal bureaucracies be responsive to the needs of local Indian community members if they have been created by the existence of federal financing and associated rules and regulations? The realization that most federal programs function largely as employment programs whether they be, for example, educational, training programs or health programs, must raise the fundamental issue of whether the entire foundation, nature, and direction of tribal community development is appropriate.

Underlying all of these thoughts is the viability of tribal government as a political entity to function in the interest of the communities future as it understands and sees that future. Under the illusion of self-government and self-determination the present course of reform in national Indian affairs may be leading tribal government to a structured bureaucratic federalism substantially weakening the ability of tribes as political entities to respond to the needs of their people.

The ideas of Cohen, John Collier, and Nathan Marigold, as stated in the parts of the Indian Reorganization Act which never became law, should be re-studied. There is a need to consider what is meant politically by changing the tribal/federal relationship from active to passive trust, to what George Manuel means by the "Fourth World" as a model for Indian community development, to look again at the political-legal meaning for tribal government of the "20 Point Proposal," and to re-read, in the spirit in which it was written, the "Declaration of Indian Purpose" from the Chicago Conference of American Indians.

Indian tribes and communities never needed an American Indian Policy Review Commission to express their political thought or to inspire Federal policy makers into creative legislative proposals. Most assuredly the Federal government and those who have sustained the present course needed the Commission.

In earlier days, it used to be very easy to clearly see the boundaries between the Federal government and the tribe. There was one agency linking the tribe to the Federal government which was physically located within a BIA agency compound on the reservation; and for the most part the "Federal Government" was white. It is not so today and the vision of where the boundaries are is confused by a multi-agency linkage of the Federal government to tribal communities and by an inability to see who is a defender or enemy of the concept of freedom and self government or who is a facilitator of the tribal or Federal interest. The mixed-blood dilemma among Minnesota Chippewas in the late 1800's and early 1900's, as the Federal government encircled and entrenched its interests in Chippewa communities, is lesson enough for those who understand their own history of what is happening today.

When Chippewa leaders testified to the government's policy of attempting to convert Indians into farmers, I was surprised to understand that most traditional leaders wanted this for their people. In reading their testimony before congressional committees, I learned that the basis for their desire was a realization that the old way of sustaining the community in food and housing, for example was no longer viable. If farming as a skill could be adapted it would free the Chippewa people from dependency on the Federal government.

One man testified regarding this matter. He said that "the problem with this reservation is that education is bane . . . the little education we have, has at least enabled us to read the 'Declaration of Independence' ". In this statement and in his further testimony, we understand that the Federal government wasn't trying to teach skills of agriculture to enable Chippewa tribal communities to be self-sufficient and independent, viable, self governing communities, but was attempting to teach the lifestyle of the farmer by the maintenance of dependency, the destruction of the community, and the ability to facilitate the national interest at some later date.

To summarize the American Indian Policy Review Commission findings about the recent course of social reform relative to American Indians, I am reminded of a story I once heard from a close friend of mine, Lionel Bordeaux.

It's a story about a bird who didn't want to fly South. The bird wanted to be different and decided to stay up North during the winter. As the fall came he told all of his friends good-bye. His family, being the last to leave, tried to convince him to come with them, but he said no. His family felt very worried about their relative's idea to be different and to stay up North during the winter. Well, as the weather got colder and colder and the bird became more and more lonely, he decided to give up his idea of wanting to be different and remain North during the winter: He wanted to fly South. As he started to fly South, a blizzard came up and it was very cold in the sky. His wings were starting to get iced up and he became weaker and weaker. Finally, with one last swoop of his wings he fell to the ground and landed in a farmyard somewhere in Nebraska. When he was just about dead, along came a cow who crapped on the bird. The warm crap, of course, saved the bird and he began to wonder if it wasn't necessary to be crapped on in order to be different and survive. He started to stretch his wings and felt so happy about his salvation that he started to chirp. Well, in that farmyard there also lived a cat and he saw the cow pie moving and heard it chirping. The cat stared at the cow pie wondering what the heck was going on. He had never seen a cow pie move and heard it chirp before and so went over to investigate. As he moved the cow pie this way and that way, he looked down and saw the bird. Before the bird could stop chirping, the cat grabbed him and ate him on the spot.

There are three morals to this story which relate to Indian experience: Not all those who crap on you are necessarily your enemy. Not all those who take you out of a pile of crap are necessarily your friend. And, when warm and comfortable in your own pile of crap, you'd better learn to keep your mouth shut.

A CRITIQUE OF
THE TASK FORCE EIGHT FINAL REPORT TO
THE AMERICAN INDIAN POLICY REVIEW COMMISSION:
URBAN AND RURAL NON-RESERVATION INDIANS

Joseph H. Stauss

Mandate for Task Force Eight

Task Force Eight of the American Indian Policy Review Commission was confronted with the difficult task of addressing the unique problems and needs of urban and rural non-reservation Indians. Considering the degree of difficulty of this task, I think it only fair to preface my remarks with two important considerations: 1) hindsight is always better than foresight; and 2) despite my critical comments concerning the report, there is a good measure of reason, truth and wisdom in a number of the recommendations. Most of the findings are not scientifically substantiated, but in my opinion they are representative of the urban Indian experience. The task force was unable to address the unique needs of rural non-reservation Indians and so my remarks focus only on urban Indians.

My most severe criticism is one that has been voiced by others, that is, it looks like the findings and recommendations were written before the task force was carried out. I realize this is a very severe criticism but I feel it is justified.

I believe that a majority of the problems that Task Force Eight encountered stem from the mandate and guidance which originated from Congress and the supportive staff. That mandate was comprised of 3 major elements:

1) An examination of the statutes and procedures for granting Federal recognition and extending services to Indian communities and individuals.

2) The collection and compilation of data necessary to understand the extent of Indian needs which presently exist or will exist in the near future.
3) An explanation of the feasibility of alternative election bodies which could fully represent Indians at the national level of government to provide Indians with maximum participation in policy formation and program development. (P.L. 93-580)

In retrospect the first mandate could more effectively have been dealt with by the task force on trust responsibility. Task Force Eight would then have been free to start their work with the *assumption of recognition* and concentrate on development of mechanisms to assure delivery of services relevant to urban and non-reservation Indians. As it turned out, Task Force Eight didn't have time to address the assurance of delivery of services issue, which is one of the most important things they could have accomplished.

The second element of the mandate, the collection and compilation of data necessary to understand the extent of Indian needs which presently exist or will exist in the future, was an exercise in futility. Basically there were two approaches that could have been taken in solving this problem. First, Indian needs have been well documented in the literature for decades. The task force attempted to accomplish a sporadic review of existing data in the area but was not successful in this endeavor. A second method of documenting needs might be a systematic utilization of organizational and individual questionnaires or any other combination of well established social science research methods. The task force also attempted this in a sporadic manner. Copies of questionnaires issued by the task force appear in the appendix; however, no significant analysis of the data are presented. I suspect, although the report does not document this that the response rate from individual questionnaires was simply inadequate for valid analysis. Thus, the only social science research method documented in the report consists of the content analysis of the twelve nationwide hearings and some unknown number of organizational and individual questionnaires. Content analysis (in this case) was used to determine the most frequently mentioned categories which is standard technique. Unfortunately, this technique was not used systematically or comprehensively throughout the report. For an example of what might have been done, I direct your attention to appendix 2-B, page 106, of the final report. The task force has printed a profile of urban Indian population and services. This appendix provides raw data for sixty-four different Indian organizations throughout the United States. The data apparently were obtained from the organizational questionnaires. It is not apparent from the report whether analysis of this data was ever attempted. There appears to be little association between this raw data set and findings or recommendations in the task force final report. It is still possible for this data to undergo analysis. There are a number of categories such as urban Indian organizational goals and objectives, ongoing services, population, age distribution and others which might generate useful information if analyzed. I completed a content analysis of several of these categories as examples of the type of information that was available for analysis.

Table I, for example, tells us that major area of concern for urban Indian organizations, where available services cannot meet needs, was negative attitudes and misunderstanding by personnel administering these services. Second most important, lack of funds and commitment by federal, state and local governments. If you take a look at the recommendations by Task Force Eight, none deal directly with these kinds of problems. Task Force Eight recommendations focus on appropriations of funds in health, education, housing, job placement, and so on. The closest the task force comes to addressing the concerns that emerge from analysis of this data is the recommendation which directs that the (newly created) Assistant Director of Off-Reservation Indian Affairs, IHS, should "advocate and coordinate" with local agencies to assure service delivery. Perhaps, though, this would not have been one of the concerns of the new "Assistant Director," we cannot tell since there is no depth or breadth given to the role or responsibilities of this office. An example of the type of mechanism to ensure service delivery (that I allured to earlier) which I think the task force should have addressed would be: What is needed to combat negative attitudes and misunderstanding by personnel administering services in local areas? (Training, public relations, mandatory sensitivity groups, etc.)

Table II shows the relationship of stated organizational goals and objectives (broken down into representative categories) with programs currently in progress. This analysis does two things: 1) it provides a picture of the most important urban Indian service delivery programs — employment, alcoholism and cultural maintenance; and 2) it shows to what extent planning is matching actual program accomplishment. In most cases plans are being carried out, although there are identified needs in educational opportunities, social services and health care. Again, we find a lack of this type of data being used by the task force in forming recommendations. For example, there are no recommendations dealing

TABLE I

Answers to the question: Why do you feel available public services (federal/state/local) are not capable of adequately satisfying needs?

Response	No.	%
Negative attitudes and misunderstanding. (Personnel not aware of culture/Indians do not Identify with white organizations)	13	26.5
Lack of commitment by federal, state and local governments	6	12.2
Lack of funds, (lack of clout in decision making)	6	12.2
Red tape/guidelines do not account for size of Indian population	5	10.2
Inadequate address of Indian problems	5	10.2
Lack of input or participation by Indians on anything affecting them.	4	8.16
Available services are adequate	3	6.12
Lack of leadership for providing services	1	2.04
Lack of exertion of energy to prove needs	1	2.04
No lines of communication with city	1	2.04
Civic services adequate but no access	1	2.04
Lack of education and underemployment	1	2.04
More information on guidelines are needed	1	2.04
Indians allowed to work within own time frame, not government's letting them learn and get familiar with the available services	1	2.04

1. Analysis completed for *49* of *64* organizations listed in appendix. Those organizations which were not involved in direct service delivery to urban Indian populations were dropped for the analysis.
2. Percent will not equal 100 because the number of responses per organization varied.

TABLE II

COMPARISON OF STATED ORGANIZATION GOALS AND OBJECTIVES WITH PROGRAMS CURRENTLY IN PROGRESS

Category	Percent
Employment Opportunities	
Goal/objective	37
Program in progress	41
Educational Opportunities	
Goal/objective	27
Program in Progress	22
Cultural Maintenance	
Goal/objective	27
Program in Progress	27
Alcoholism	
Goal/objective	20
Program in Progress	35
Social Services	
Goal/objective	22
Program in Progress	24
Health Care	
Goal/objective	24
Program in Progress	14
Transition to Urban Life	
Goal/objective	16
Program in Progress	0

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1. Analysis completed for *49* of *64* organizations listed in appendix. Those organizations which were not involved in direct service delivery to urban Indian populations were dropped for the analysis.
2. Percent will not equal 100 because not all organizations reported for each category nor are categories comparable. Percent refers to each category independently.

specifically with providing the resources for strengthening urban Indian organization's planning, implementation and evaluation of program delivery.

One final example in the area of non-utilized data will serve to illustrate an overall problem — to what extent can we trust the results? We are not told in the report that the total sampling frame was for disseminating the organizational questionnaire. Take a look at Tables III and IV.

The estimated service area population responses (Table III) provide a picture of the majority of the organizations serving between one and three thousand followed by ten and twenty thousand urban Indians. The federal funding picture (Table IV) shows most organizations receiving between $100,000 and $200,000. The service area population data could have been compared with census figures (allowing for about a 13-40%

TABLE III

Percent of Estimated Urban Indian Service Area by Population Category

Population	**Percent**
Less than 1,000	6%
1,001 - 3,000	25%
3,001 - 6,000	13%
6,001 - 10,000	18%
10,001 - 20,000	22%
20,001 - 30,000	6%
30,001 - 50,000	0%
Over 50,001	6%
Unreported	4%
TOTAL	100%

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1. Analysis completed for 49 of 64 organizations listed in appendix. Those organizations which were not involved in direct service delivery to urban Indian population were dropped for the analysis.

TABLE IV

Percent of Organizations Receiving Federal Funds by Dollar Category

Funds	**Percent**
Zero Funds	10%
$25,000 to $50,000	10%
$50,000 to $100,000	6%
$100,001 to $200,000	23%
$200,001 to $500,000	12%
$500,000 to $1,000,000	8%
$1,000,001 to $2,000,000	4%
$2,000,001 to $3,000,000	3%
Unreported	24%
TOTAL	100%

1. Analysis completed for *49* of organizations listed in appendix. Those organizations which were not involved in direct service delivery to urban Indian populations were dropped for the analysis.

undercount) and the funding could have been checked against Administration For Native Americans (old ONAP) and CETA — the two major federal funding sources. The point is, if you wanted to use this data for documentation of need or to pinpoint high areas of concern, that could have been done and some legitimacy afforded the responses by associating estimates to known alternative bodies of data.

In summary, 1) if the available data had been adequately analyzed, additional areas for potential recommendations would have surfaced; 2) some "needs" data are buried in the new data and could have been checked for viability; and 3) the past literature could have been used to document "need."

The third mandate was to explore the feasibility of alternative elective bodies which could fully represent Indians at the national level of government to provide Indians with maximum participation in policy formation and program development. The very language of this particular mandate pre-determines the responses available. The mandate is fraught with assumptions. There is a *need* for an "alternative *elective* body" to represent urban Indians on a *national* scale. The mandate also went on to stipulate a purpose for the elective body. Such a body's major purpose would be to "provide urban Indians with maximum participation in policy formation and program development." This mandate, to put it kindly, seems to be some sort of hidden agenda — assuming the need and purpose of a non-existent elective body. What could the task force do? Seemingly out of frustration, we are provided with three pages (pp. 81-84) discussing a workshop held in Washington, D.C. by Task Force Three (Federal Administration and the Structure of Indian Affairs.)

Methodology For Task Force Eight

The methodological problems of Task Force Eight begin with their "methodology" chart located on page seventeen. This chart does not describe methodology at all but is, instead, a flow chart of persons involved in the transfer and communication of information. Overall, methodology problems of the task force report are best illustrated in section six, "Social Needs Assessment." In this section, data were gathered to document unique needs of urban and non-reservation Indians. Based on standard criteria commonly used to judge the scientific defensibility of a piece of research, this section is the most vulnerable in the report. There are major and minor problems which intermingle resulting in confusion on the reader's part as to (a) the existence of unique urban Indian needs or (b) the validity of the entire report. I will illustrate several of the major problems.

This section entirely misses the focus of *unique* or *special* needs of urban and non-reservation Indians. The needs identified in this section are generated from two federal reports: *A Study of Selected Socie-economic Characteristics of Ethnic Minorities*, based on the 1970 census; and *Volume 3, American Indians, Census Population Subject Report.* These statistics are not unique to urban Indians. Moreover, there are major problems of undercount and who is identified to the United States Census Bureau as an Indian. Throughout the section there is an overdependence on existing federal statistics and an overreliance on these two references as crucial data sources. In addition to utilization of a limited number of resources, *interpretation* of the available data is sadly lacking.

The task force also chose to ignore available social science literature over the past eighteenth years and data continually collected by urban Indian centers. Data on needs assessment were requested at the end of the organizational questionnaire. If this data were collected, it apparently was not analyzed. I suspect the data simply were not collected. And, more importantly, the questionnaires that were sent out were poorly constructed and therefore yielded poor data. The task force may have felt that the body of available literature concerning urban Indians was not representative or accurate — if this were the case we should have been told that in the report. I believe that the available literature at least deserved review before rejection.

The task force does list a number of "frequently mentioned need areas" (pp. 73-76). Unfortunately, we are not told if this list is in priority order, comprehensive, or related in any way to the overall findings. The specific recommendation for this area (p. 76) is a weak one imploring Congress to pass "relevant legislation regarding these needs."

In summary, a significant case can be made that documentation of need.was superfluous. It is commonly accepted that the Indian population has been "studied to death." Unfortunately, the task force's attempt to document needs failed. It especially failed from the perspective of Congressmen and other readers looking for the use of strong research methods and documentation of findings. Quite clearly, this was the intention of the task force at the beginning of the study. Examination of Public Law 93-580, Section 2, reveals a discussion of criteria for problem identification and development of the recommendation section. It stresses that proof of conclusions should be quantified:

> No conclusion should be the result of mere opinion or even the most experienced technician or specialist. Instructions or requirements should have a direct relationship to the conclusions in the facts or data compiled.

Clearly, Congress was looking for a scientifically defensible document. It may have been a mistake not to argue two points from the beginning. First, we are dealing with a population where documenting need is not easy. Development of a valid sampling frame from which to gather information is extremely difficult. Second, need has been identified, at least from the service population over the last two decades, so why not assume needs exist and proceed to solving the problems of delivering services to the urban Indian population?

Coordination for Task Force Eight

Another major problem was one of coordination. It is obvious from the extensive task force coordination plan, established prior to the carrying out of the report, that Task Force Eight was intended to interface with Task Force One (Trust Responsibilities and the Federal-Indian Relationship), Task Force Four (Federal, State and Tribal Jurisdiction), and Task Force Five (Indian Education), and Task Force Ten (Terminated and Non-Federally Recognized Indians). Examination of the findings of these task forces reveals the fact that regardless of the original plan there was little follow-through. In fact, some of the stronger findings of the task force on terminated and non-federally recognized tribes deals directly with the substance of Task Force Eight. Task Force Six provides a substantial quantity of "hard data" on urban Indian Health which could have been used by Task Force Eight to document need. Task Force One contains a section which deals with the recognition issue of off-reservation and unrecognized Indians. The point is, a severe coordination problem between the task forces got in the way of Task Force Eight doing its job.

Recommendations of Task Force Eight

This brings us full circle to the cautions with which I prefaced my remarks. That is, we can always do a better job of second guessing after-the-fact, and there are a number of what I feel are solid recommendations although there is not adequate attention to the mechanisms of service delivery or to the unique problems of off-reservation Indians. The findings, of course, are colored by the shortcomings in methodology. I direct your attention to three findings in which I think strong support exists. First, is the finding dealing with recommendations of recognition. It is a strong case explicitly made under the Snyder Act. The second is concerned with appropriations. These are solid recommendations. Several of the overall recommendations deal with the lack of and need for more funds. The third is coordination of agencies to guarantee the delivery of citizenship benefits for urban Indians.

I think we can agree on these recommendations, the others are much more controversial. But a number of questions can be raised. Information on the number of urban and non-reservation persons supporting the recommendations is needed. The source of the recommendations is a major question, they simply did *not seem to emerge from the data.* Perhaps the best example is recommendation eight, which suggests the use of an identification card or roll number to provide services to urban Indians. This recommendation appears to include only federally recognized tribes — what about state recognized tribes and rural non-reservation Indians? Among the other more controversial issues are the creation of an Indian agency and the development of an off-reservation consultants' council.

My concern is that anyone reading the Task Force Eight final report might miss some of the more important recommendations. There is no direct association between the overall recommendations that appear throughout the Social Needs Assessment Section (pp. 57-80). For example, whereas the overall recommendation deals with the appropriation of funds for the area of unemployment, the specific recommendations (p. 61) deal with (a) skill development, vocational education and work experience opportunities, (b) opportunities for basic employment counseling, (c) the establishment of employment assistance agencies for urban Indians, (d) providing assistance in obtaining credit, and (e) breaking stereotypes about Indian workers and pursuing affirmative action in public agencies.

There are a number of specific recommendations (like the one detailed above) throughout this section which, although they do not emerge from the data, we know are rooted in real needs and problems. This is what I mean when I referred to there being a good measure of reason, truth and wisdom in a number of the recommendations. One critical question for the thoughtful reader is, to what extent can Congress address these problems? In other words, is the overall recommendation of appropriation of funds the only thing that can be done at the congressional level? If so, although we cannot find a direct relationship between these specific recommendations and the overall recommendations, Task Force Eight went as far as it could to provide a direction for Congress.

Summary

The product of Task Force Eight should not be measured alone, by the methodological and coordination failures that I have identified. As I have argued, a number of recommendations could and should be taken seriously. The problem we are left with is a lack of a clear and concrete understanding of how these recommendations should be carried out. This is a problem Congress must deal with directly.

There still exists today a substantial urban and rural non-reservation Indian population. That population has unresolved needs and problems of participation in both the Anglo and Indian worlds. That population has an undisputed special relationship with the Federal government. Congress must address itself to legislation appropriate to these realities. Task Force Eight has provided us with some broad direction. Much work remains, however, to meet the needs of urban and rural non-reservation Indians.

RECOMMENDATIONS OF
THE AMERICAN INDIAN POLICY REVIEW COMMISSION
AND
THE SUPREME COURT

Jerry Muskrat

From a legal perspective, it is difficult to comment upon the final report of the American Indian Policy Review Commission. Quantitatively speaking, there are numerous Commission recommendations which address themselves to legal issues or which have, in whole or in part, legal connotations. Qualitatively, the American Indian Policy Review Commission's report is not legal writing per se, i.e., based on legal analysis and legal documentation, rather it is a policy statement based on extra-legal considerations. It is, therefore, more descriptive as to what the law ought to be than analytical of what the law is. Nevertheless, the Commission's report does identify and address itself to legal problems, and, in turn, proffer solutions, most of which are in the form of legislative recommendations. As a consequence of these qualitative and quantitative difficulties, this paper will seek to restrict discussion to some of the more specific legal recommendations which the American Indian Policy Review Commission final report proposes, in particular those recommendations involving the Indian Civil Rights Act (ICRA).[1]

The Commission correctly identified the interpretation and application of the ICRA and the issues in Indian law and politics. The importance of the ICRA and the issues its interpretation and application raised, likewise was recognized by the United States Supreme Court. The Supreme Court granted certiorari in its first case directly involving the ICRA on May 16, 1977.[2] The High Court heard argument November 22, 1977, and issued, on May 15, 1978, a decision as surprising as it was important to the Indian community. The decision of the United States Supreme Court in *Santa Clara*

Pueblo v. Martinez,[3] while simultaneously affirming and sustaining most of the findings and recommendations of the American Indian Policy Review Commission, nevertheless, drastically changed the analysis and understanding of the Commission and the legal profession regarding the ICRA.

The Indian Civil Rights Act

The Indian Civil Rights Act emerged as a consequence of the abuse of civil rights and civil liberties of individual Indians by their tribal governments, especially tribal courts[4] and tribal councils.[5] In the early 1960s, Congress began a series of legislative hearings investigating alleged deprivations of the civil liberties of tribal members by tribal authorities.[6] Testimony at these hearings attested to a broad range of abusive practices, including persecution of political dissidents, arbitrary denial of tribal enrollment, election fraud, restriction of religious freedom, and partiality and corruption on tribal courts.[7]

Disturbed by the findings, Congress sought to establish a remedy based on the civil rights and civil liberties protections found in the United States Constitution.[8] Through the exercise of its plenary power in the area of Indian affairs,[9] Congress enacted the Indian Civil Rights Act of 1968, 25 U.S.C. §1301-1303 (*1970*). Incorporated as Title II of the 1968 Civil Rights Act,[10] the ICRA, as legislated, closely resembles, both in form and substance, the basic provisions of the Federal Constitution's Bill of Rights and Fourteenth Amendment.[11]

The ICRA applies to all federally recognized Indian, Eskimo, and Aleut tribes, bands, groups, Pueblos, communities, villages, and rancherias which carry on self-government functions. Included are all native groups which have been organized under federal statutes, as well as those which have been formally recognized by the federal government through treaties or executive orders.[12] The ICRA places responsibilities on federal and/or state authorities. It is applicable to all tribal officials performing legislative, executive, judicial or administrative duties for the tribe. All persons, Indian or non-Indian, who come under the jurisdiction of the tribe are protected also by the Act.[13]

In enacting the Indian Civil Rights Act, Congress sought to strike a delicate balance between the interests of individual tribal members and those of the tribe as a whole. Consequently, Congress sought to strengthen individual rights by providing civil rights and civil liberties protections to individual tribal members, while simultaneously attempting to maintain tribal sovereignty, protect tribal self-government, and preserve tribal culture.[14] As the legislative history attests,[15] the legislative branch rationalized a balance between these apparently competing and conflicting goals. The task of the judiciary, however, in maintaining this balance through interpretation and application of the ICRA proved to be an even more difficult task.[16]

Litigation under the Indian Civil Rights Act, which gave rise to the Policy Review Commission's concern with the ICRA, saw challenges brought by individual tribal members to the conduct of tribal authorities in a wide variety of different areas.[17] Chief among these were controversies involving: tribal elections, tribal enrollment and membership, abuse of authority by tribal councils, tribal court procedures, and tribal police misconduct.[18] As a consequence of this litigation, the Indian Civil Rights Act served as a basis through which federal courts could and did interfere with the internal affairs of tribal governments. This interference by federal courts produced a great deal of concern in the Indian community, and this concern, in turn, was reflected in the analysis and recommendations of the American Indian Policy Review Commission concerning the Indian Civil Rights Act. Accordingly, the Commission sought to reduce this interference from federal courts in Indian internal affairs.

Problems Concerning the Indian Civil Rights Act

In its report to Congress,[19] the American Indian Policy Review Commission identified the more critical problems concerning the Indian Civil Rights Act as those involving:

(1) The alleged general waiver under the IRCA of the sovereign immunity of tribes.[20] According to the Commission, Indian tribes had always enjoyed sovereign immunity under the law, however, several courts had held that this immunity had been waived by the passage of the ICRA.[21] This "waiver doctrine", the Commission observed, subjected tribal governments to suits involving money damages for deprivation of individual civil rights by tribal officials. The Commission concluded that nothing in the legislative history of the act indicated that Congress intended to subject Indian tribes to suits for monetary damages. Rather, the Commission argued, the doctrine of sovereign immunity should protect tribal

governments just as it protects federal and state governments from suit without their consent. In regard to violations of individual civil rights by tribal officials, the Commission agreed with the position of the Departments of Interior and Justice that "tribal officials should be subject to the same judicial restraints as are State officials and no more ... and abusive conduct by tribal officials would subject them to personal liability under the same legal theories that State officials are."[22]

(2) The scope of jurisdiction of federal courts under the Act.[23] The Commission observed that despite the fact that the jurisdictional provision for review in federal court is limited to habeas corpus (i.e., §1303), some federal courts have, in fact, assumed jurisdiction over "a nearly limitless range of complaints" alleging violations of §1302 by tribal officials. On the other hand, other federal courts have dismissed similar complaints as being internal political disputes beyond the jurisdiction of federal courts. Thus, the Commission concluded that while federal courts have been unanimous in ruling that their jurisdiction is not limited to habeas corpus, there exists, nevertheless, considerable confusion as to the definitive scope of federal court jurisdiction under the ICRA.[24]

(3) The proper legal standard applied by federal courts in judging the actions of tribal governments and provisions of the ICRA.[25] The Commissoin noted that federal courts have been inconsistent in their holdings as to the proper legal standards for interpreting and applying the ICRA to the conduct of tribal governments. Some courts had held that the ICRA simply made applicable to tribal governments the constitutional provisions of the Bill of Rights and the Fourteenth Amendment. Other courts, however, took the view that the act did not incorporate the "whole panoply of federal constitutional law" but rather that the actions of tribal governments would be measured "in the light of tribal practices" and that "essential fairness in the tribal context" was the proper standard of evaluation.[26] The Commission thus favored the interpretation of the Indian Civil Rights Act in an Indian context rather than from an Anglo-American perspective.

(4) The extent under the ICRA of the right to trial by jury.[27] At present §1302(10) provides that "any person accused of an offense punishable by imprisonment" shall have the right to a trial by jury. this provision concerned the Commission because it apparently authorized to the accused a right to a trial by jury no matter how trivial the charge. This, the Commission felt, could possibly encumber tribal courts in their administration of justice. The

Commission noted that tribal courts presently handle in excess of 80,000 cases per year. If jury trials were liberally sought, the Commission feared that tribal judicial systems might quickly break down. The Commission further noted that although the limitations imposed upon the penal power of federal magistrates hearing petty offenses in United States district courts were the same as those imposed upon tribal courts by the ICRA, nevertheless, there was no constitutional right to a trial by jury for petty offenses in those courts. Thus, the Commission concluded, the ICRA imposed upon tribes an obligation for providing a trial by jury in cases where no similar obligation was imposed upon either state or federal governments.

(5) The limitations placed upon the penal authority of the tribal courts.[28] Section 1302(7) of the ICRA provides that no tribe shall impose punishment upon any person greater than imprisonment for six months or a fine of $500 or both. The Commission felt that these penal limitations placed upon tribal courts were not realistic, that little consideration had gone into establishing these limits, and that because of the importance of tribal judicial systems, it was necessary to increase the penal authority of tribal courts.

(6) The extent to which the laws of tribes and the judgments of tribal courts would be recognized by federal and state courts and, on the other hand, the extent to which tribal courts must recognize the laws and judgments of the states.[29] The Commission noted that this was a problem not specifically arising under the 1968 Indian Civil Rights Act, but one, nevertheless, which posed difficulties for both tribal and state governments. Basing its analysis on the principles of "full faith and credit" and "comity", the Commission observed that historically the legal acts of Indian tribes had been afforded full faith and credit by the United States government in accordance with the concept that tribal governments were legally analogous to territorial governments. Recently, however, some courts have rejected this theory of the full faith and credit applicability, while others continue to grant it. This inconsistency and confusion concerned the Commission for it believed that it was clearly in the interest of "orderly administration of the law" to require both states and tribes to respect the laws and legal decisions of one another.

(7) The exhaustion of tribal remedies as an essential requirement prior to the assumption of federal court jurisdiction.[30] The Commission noted that there was a growing body of law under the ICRA which required the exhaustion of tribal judicial and

administrative remedies before an action would be considered in a federal court; however, the decisions had not been consistent and there was some confusion concerning the requirements.

The procedural requirement of the "exhaustion of remedies" developed from the federal judiciary's practice of requiring that before the federal courts would take jurisdiction over matters which should be determined in state courts, the complainant must show either that he had sought relief before the appropriate state agencies or courts, or that it would be futile to attempt to secure such relief from those state authorities. The role of federal courts, the Commission explained, is premised on the principle that local governments should resolve local problems and that intervention by federal courts should occur only when it is necessary to vindicate a federally protected right, and even then, only after there has been a clear demonstration that the local government will not act. Furthermore, according to the Commission, it was not the intent of Congress in enacting the ICRA to make federal courts general supervisors of tribal governments. Consequently, the Commission concluded, "it is extremely important that the principle of exhaustion of tribal remedies be strictly adhered to by the Federal Courts in every proceeding under this Act.[31]

Recommendations Regarding The Indian Civil Rights Act

As a consequence of its identification of these principal problems, the Commission recommended in its report that Congress enact several amendments to Title II of the 1968 Civil Rights Act.[32] Among the Commission's recommendations to Congress were:

(1) Congress should enact provisions which definitely clarify that the ICRA was not intended as a general waiver of sovereign immunity of the tribes.[33] The Commission noted that while the courts must have authority to enforce the substantive aspects of the IRCA, Indian tribes, like other governments, must be entitled to sovereign immunity and protection of their officials if they are to be able to govern effectively and fairly. Equitable actions against tribal officials may be permissible, the Commission observed, but they should be immune from money judgments when their acts are within the scope of their official duty. In this regard, they should be entitled to the same protections as federal and state officials, i.e., protected by immunity when acting within the scope of their official duty buy subject to personal liability when acting beyond.

(2) Congress should re-examine and define the jurisdictional provisions of the IRCA.[34] According to the Commission, even though the only jurisdictional provision included in the Act was that of habeas corpus review (§1303), federal courts, nevertheless, have assumed jurisdiction over a broad range of tribal activities which do not involve detention. At present, the jurisdictional reach of federal courts is unlimited. This, the Commission concluded, was in complete contrast to all other federal civil rights legislation.

(3) Congress should specify that the right to trial by jury be applicable only to offenses which, if charged in federal court, would be subject to the right to trial by jury.[35] At present, the Commission concluded, the right to trial by jury under the ICRA theoretically applies to practically every offense a person might be charged with, no matter how slight the penalty.

(4) Congress should modify the present provisions of the ICRA in order to expand the limits of the penal authority of a tribe to include a maximum fine of up to $1,000, or imprisonment of up to one year, or both.[36]

(5) Congress should amend Section 1738 of Title 28, U.S. Code, in order to specifically include Indian tribes among those governments to whom full faith and credit should be given.[37] The Commission explained that the purpose of this amendment was to clarify and reinforce the rulings of the majority of courts which have held that Indian tribes are on the same footing as states and territories with respect to the application of full faith and credit principles.

(6) Congress should amend the ICRA to provide limited appeals to United States district courts and even then only after the exhaustion of all available tribal remedies.[38] According to the Commission, "the need for such a provision is directly related to: (1) the Commission recommendation for according full faith and credit to tribal laws and court judgments; and (2) to the expanding role of tribes in civil and criminal matters involving non-Indians."[39]

In the ten years following the enactment of the Indian Civil Rights Act, its federal court interpretations and applications aroused considerable distress within the Indian community. Initially, passage of the ICRA was viewed as an affront to tribal sovereignty because it was forced upon Indian tribes without their consent. It was further believed that if tribal governments had desired this type of legislation, then they, rather than the United States government, should have been responsible for framing and enacting it. The initial concern crystallized into a strong and pervasive feeling that the ICRA was a threat to the Indian community's cultural integrity and preservation. Because the ICRA reflected European concepts of law and justice, its application, it was contended, could seriously disrupt and possibly destroy traditionally held social concepts. Opponents of the ICRA were particularly concerned that its interpretation and application were in the hands of non-Indian federal judges, some of whom, it was believed, were uninformed concerning Indian affairs.[40]

Much of the original opposition to the IRCA within the Indian community faded, however, as individual Indians began to assert the rights provided by the ICRA to rectify the deprivation of civil rights and civil liberties by tribal governments. Eventually, federal courts did, in fact, assume jurisdiction and administer decisions in a wide variety of different legal situations and subject areas. The rise in litigation and the inconsistency of decisions among the various federal courts ultimately resulted in a case which directly involved the ICRA and which reached the United States Supreme Court.

Santa Clara Pueblo v. Martinez

On May 15, 1978, the Supreme Court of the United States issued its opinion in *Santa Clara Pueblo v. Martinez.*[41] The case involved a suit initiated by a female member and her daughter of the Santa Clara Pueblo. They originally brought suit in federal court against the tribe and its governor seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who marry outside the tribe, while extending membership to children of male members who marry outside the tribe. Mrs. Martinez complained that this rule was discriminatory on the basis of both sex and ancestry and that it was in violation of the Indian Civil Rights Act, 25 U.S.C. §§1301-1303 (1970), which provides that "no Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of the laws" (§1302)(8).[42]

A United States District Court in New Mexico, entered judgment in favor of the tribe.[43] Mrs. Martinez appealed to the U.S. Court of Appeals and that court reversed the lower court's opinion.[44] The Supreme Court then granted certiorari.[45]

Before the High Court, the tribe conceded that §1302 of the ICRA modified the substantive law applicable to the tribe, however, the tribe contended that Congress did not intend to authorize federal courts to review violations of the ICRA's provisions, except as they might arise on habeas corpus. Furthermore, the tribe argued that Congress did not waive the tribe's sovereign immunity from suit. Mrs. Martinez, on the other hand, contended that §1302 not only modified the substantive law applicable to the exercise of sovereign tribal powers but also authorized civil suits for equitable relief against the tribe and its officers in federal courts.[46]

Justice Marshall, delivering the opinion of the court, explained that the case as presented required the court to decide "whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female members."[47] However, in order to decide this issue it was first necessary, Marshall explained, to determine whether the ICRA may be interpreted to authorize, by implication, such actions against a tribe or its officers in federal courts, since the ICRA does not expressly authorize the bringing of civil actions for declaratory or injunctive relief to enforce its substantive provisions.[48]

Indian tribes, the Supreme Court explained, have long been recognized as possessing sovereign immunity, and, as a consequence, "Indian nations are exempt from suit."[49] Furthermore, the Court noted, "it is settled that a waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed'" and that "nothing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of Federal Courts in civil actions for injunctive or declaratory relief."[50] Consequently, the Court concluded that the ICRA neither expressly nor by implication waived the sovereign immunity of Indian tribes and therefore suits against an Indian tribe under the ICRA were barred by its sovereign immunity.[51] However, the Court continued, tribal officers are not protected by the tribe's sovereign immunity from suit. Therefore, the Court reasoned, it was necessary to determine if declaratory and injunctive relief, such as was sought here against a tribal official, though not expressly authorized by the statute, was nonetheless implicit by its terms.[52]

The Court observed that Congress clearly had the power to authorize civil actions against tribal officers and had done so via the habeas corpus provisions of §1303.[53] Furthermore, the Court noted, Congress' failure to provide in the ICRA additional remedies other than habeas corpus was a deliberate one,[54] and that Congress' exclusive recognition of the habeas corpus remedy reflected its attempt to reach accommodation between two competing goals of the ICRA, i.e, "preventing injustices perpetrated by tribal governments on the one hand, and, on the other, avoiding undue or precipitous interference in the affairs of the Indian people."[55]

Accordingly, the Court reasoned, Congress decided the habeas corpus remedy would adequately protect the rights of the individual Indians while avoiding unnecessary intrusions on tribal governments. In addition, the Court continued, Congress in its ICRA deliberations had rejected proposals for federal review in a civil context.[56]

Given this legislative history, then, the Court reasoned that it was unlikely that Congress intended a private cause of action for injunctive and declaratory relief in federal courts to secure enforcement of §1302. Rather, the legislative history indicated that the ICRA authorized federal judicial review of tribal actions only through the habeas corpus provision of §1303.[57] In other words, Congress intended only to modify the substantive law applicable to Indian tribes and to allow its enforcement in federal court only through habeas corpus proceedings.[58] The Court thus suggested that tribal, rather than federal forums, may be better suited to resolve those issues arising under §1302 in a civil context.[59]

Thus, the Supreme Court reversed the judgment of the lower Court of Appeals and held:

> Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of §1302, in the event that the tribes themselves prove deficient in applying and enforcing its substantive provisions. But unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that §1302 does not impliedly authorize actions [in federal courts] for declaratory or injunctive relief against either the tribe or its officers.[60]

The Supreme Court and the American Indian Policy Review Commission

In its decision, the U.S. Supreme Court tended to confirm the analysis and conclusions of the American Indian Policy Review Commission regarding the Indian Civil Rights Act. The court agreed with the Commission that the ICRA was not a general waiver of sovereign immunity of the tribes. As the court noted:

> Nothing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of the federal courts in civil actions for injunctive or declaratory relief. Moreover, since the respondent in a habeas corpus action is the individual custodian of the prisoner, . . . the provisions of §1303 can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence here of any unequivocal expression of contrary legislative intent, we conclude

> that suits against the tribe under the ICRA are barred by its sovereign immunity from suit.[61]

The court likewise agreed that the scope of the jurisdiction of federal courts was limited under the ICRA to habeas corpus actions:

> [The legislative history indicates] . . . that the ICRA was generally understood to authorize federal judicial review of tribal actions only through the habeas corpus provision of §1303. These factors, together with Congress' rejection of proposals that clearly would have authorized causes of action other than habeas corpus, persuade us that Congress, aware of the intrusive effect of federal judicial review upon tribal self-government, intended to create only a limited mechanism for such review, namely, that provided for expressly in §1303.[62]

Although the Commission offered no formal recommendation regarding the proper legal standards for interpretation and application of the Indian Civil Rights Act by federal courts, it nevertheless appeared to favor an interpretation judged from an Indian perspective and, in turn, preferred a very limited application in the tribal context. Among the legal profession, it had been anticipated that the Supreme Court, in reaching a decision in the *Santa Clara Pueblo v. Martinez* case, would issue legal guidelines according to which federal courts would interpret and apply the ICRA. However, because the court's decision in *Martinez* was based on a jurisdictional issue, the court never reached the merits of the *Martinez* complaint, and, consequently, never issued the expected guidelines. Nevertheless, the Court's dictum in *Martinez*, referring to tribal culture and tradition, suggests it too favors interpretation from an Indian perspective:

> As is suggested by the District Court's opinion in this case, . . . efforts by the federal judiciary to apply the statutory prohibitions of §1302 in civil context may substantially interfere with a tribe's ability to maintain itself as a culturally and politically distinct entity.[63]

The court further noted:

> Given the often vast gulf between tribal traditions and those with which federal courts are more intimately familiar, the judiciary should not rush to create cause of action that would intrude on these delicate matters.[64]

The Commission expressed concern regarding the extent of the ICRA's right to trial by jury in tribal courts and the administrative and financial burdens this could place on the tribe and its judicial system. The Supreme Court in *Martinez*, likewise noted the goal of protecting tribal self-government and the tribal judicial system, and the possible damages the burdens of increased litigation posed:

> Creation of a federal cause of action for the enforcement of rights created in Title I, however useful it might be in securing compliance with §1302, plainly would be at odds with the congressional goal of protecting tribal self-government. Not only would it undermine the authority of tribal forums ... but it would also impose serious financial burdens on already "financially disadvantaged" tribes.[65]

Finally, the Commission also argued for the expansion of the penal authority of tribal courts under the ICRA, the recognition and application of the doctrine of "full faith and credit" for the judgments of Indian tribal courts, and for the requirement of "exhaustion of remedies" prior to the appeal from tribal court to federal court. Although the Supreme Court did not directly speak to any of these matters, the Court, nevertheless, appeared to recognize and support the importance and legitimacy of tribal courts. As the Court, in its dictum observed.

> Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians.[66]

The Court went on to note:

> Judgments of tribal courts, as to matters properly within their jurisdiction, have been regarded in some circumstances as entitled to full faith and credit in other courts.[67]

Conclusion

The American Indian Policy Review Commission sought, through its legislative recommendations to the Congress, to resolve the problems it identified with the ICRA. However, with the *Santa Clara Pueblo v. Martinez* decision, the Supreme Court itself has apparently resolved several of the Commission's concerns. By denying the alleged waiver of sovereign immunity under the ICRA, the Court continues to recognize and strengthen the concept of tribal sovereignty. By limiting the scope of federal court jurisdiction under the ICRA to habeas corpus causes of action, the interference of federal courts in tribal affairs is thereby minimized and tribal autonomy enhanced. Further, by recognizing in its dictum the necessity and desirability of protecting tribal customs and traditions from outside cultural interferences, the Court promotes the preservation of tribal culture. And finally, by noting the importance of tribal courts, the Court likewise enhances the concept of tribal self-government, which in turn forms the basis for the Indian community's goal of self-determination.

The Supreme Court in *Martinez*, then, not only confirmed the findings and recommendations of the American Indian Policy Review Commission with respect to the ICRA, but more importantly, it appears to have accepted the philosophical premises underlying the Commission's analysis and recommendations; that is to say, the American Indian Policy Review Commission and the Supreme Court both appear to agree that the concept of tribal sovereignty governs the relations between the federal government and Indian tribes. This in turn gives rise to the concepts of tribal autonomy and self-government as manifestations of tribal sovereignty, which in turn give rise to the concept of self-determination for Indian people as individuals and as tribes. Consequently, it would appear likely that should other Commission recommendations reach the Supreme Court, they too would be affirmed.

NOTES

1. "Indian Civil Rights Act of 1968," U.S., *Statutes*, vol. 82, p. 77; cited hereafter as ICRA.

2. *Santa Clara Pueblo v. Martinez*, cert. granted, 431 U.S. 913, 97 S. Ct. 2172, 53 L. Ed. 2d, 223 (1977).

3. ______ U.S. ______, 98 S. Ct. 1670 (1978).

4. For a detailed study of the problems of tribal courts resulting in the deprivation of the civil liberties of individual tribal members, see: William J. Lawrence, "Tribal Injustice: The Red Lake Court of Indian Offenses," *North Dakota Law Review* 48 (1972): 639. For a discussion of Lawrence's study, see Joseph de Raismes, "The Indian Civil Rights Act of 1968 and the Pursuit of Responsible Tribal Self-Govenment," *South Dakota Law Review* 20 (Winter 1975): 74.

5. For a most flagrant example of tribal council action depriving tribal members of their civil liberties, see *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (10 Cir. 1959).

6. For an excellent work on the legislative history of the ICRA, see Donald L. Burnett, Jr., "An Historical Analysis of the 1968 Indian Civil Rights Act," *Harvard Journal Legislation* 9 (4), (May 1972): 557.

7. de Raismes, 73.

8. The civil rights and civil liberties protections found in the United States Constitution were, themselves, unavailable to remedy the situation. The provisions

of the United States Constitution generally do not apply to Indian tribes. As the Supreme Court in *Martinez* explained:

> As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority. Thus, in *Talton v. Mayes*, 163 U.S. 376, 16 S. Ct. 986, 41 L. Ed. 196 (1896), this Court held that the Fifth Amendment did not "operate upon" "the powers of local self-government enjoyed" by the tribes, Id., at 384, 16 S. Ct. at 384. In ensuing years the lower federal courts have extended the holding of *Talton* to other provisions of the Bill of Rights, as well as to the Fourteenth Amendment (*Santa Clara Pueblo v. Martinez*, 98 S. Ct. 1676.)

9. This plenary power of Congress to apply "constitutional protection" to Indian tribes was noted by the Supreme Court in *Martinez* (98 S. Ct. 1676):

> Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess. Title I of the ICRA 25 U.S.C. §§ 1301-1303, represents an exercise of that authority. In 25 U.S.C. § 1302, Congress acted to modify the effect of *Talton* and its progeny by imposing certain restrictions upon tribal governments similar, but not identical to those contained in the Bill of Rights and the Fourteenth Amendment (*Santa Clara Pueblo v. Martinez*, 98 S. Ct. 1676).

10. U.S. *Statutes*, vol. 82, p. 77.

11. As the Supreme Court observed in *Martinez:*

> Section 1302, rather than providing in wholesale fashion for the extension of constitutional requirements to tribal governments, as had been initially proposed, selectively incorporated and in some instances modified the safeguards of the Bill of Rights to fit the unique political, cultural and economic needs of tribal governments (*Santa Clara Pueblo v. Martinez*, 98 S. Ct. 1676).

The Court further noted that:

> The provisions of § 1302,... differ in language and in substance in many other respects from those contained in the constitutional provisions on which they were modeled. The provisions of the Second and Third Amendments, in addition to those of the Seventh Amendment, were omitted entirely. The provision here at issue, § 1302(8), differs from the constitutional Equal Protection Clause in that it guarantees 'the equal protection of its [the tribe's] laws' rather than of 'the laws.' Moreover, § 1302(7), which prohibits cruel or unusual punishments and excessive bails, sets an absolute limit of six months imprisonment and a $500 fine on penalties which a tribe may impose. Finally, while most of the guarantees of the Fifth Amendment were extended to tribal actions, it is interesting to note that § 1302 does not require tribal criminal prosecutions to be initiated by grand jury indictment, which was the requirement of the Fifth Amendment specifically at issue and found inapplicable to tribes in *Talton v. Mayes* (*Santa Clara Pueblo v. Martinez*, 98 S. Ct. 1679, n. 14).

12. U.S. Commission on Civil Rights, *American Indian Civil Rights Handbook* (Washington: U.S. Government Printing Office), p. 10.

13. U.S. Commission on Civil Rights, p. 10.

14. According to the Supreme Court in *Martinez:*

> Two distinct and competing purposes are manifest in the provisions of the ICRA: In addition to its objective of strengthening the position of individual tribal members vis-a-vis the tribe, Congress also intended to promote the well-established federal "policy of furthering Indian self-government" (*Santa Clara Pueblo v. Martinez*, 98 S. Ct. 1969).

15. See Burnett, 557.

16. The proper standards for interpretation and application of the ICRA has been a much debated subject in the field of federal Indian law. Since its enactment in 1968, controversy has surrounded the ICRA. It has drawn criticism and praise from all quarters. One of the major concerns of proponents and opponents alike has been the issue of interpretation, especially the "due process" and "equal protection" provisions (25 U.S.C. § 1302 (8). For a general discussion of this subject, see Note, "The Indian

Bill of Rights and the Constitutional Status of Tribal Governments," *Harvard Law Review* 82 (1969): Burnett, 557; Alvin J. Ziontz, "In Defense of Tribal Sovereignty: An Analysis of Judicial Error in Construction of/the Indian Rights Act," *South Dakota Law Review* 20 (Winter 1975): 1-58; de Raismes, 59; Jerry Muskrat, "The Constitution and the American Indian: Past and Prologue," *Hastings Constitutional Law Quarterly* 3 (Summer 1976): 657-77. More specifically, with reference to "due process and equal protection," see Mary L. Muehlen, "An Interpertation of the Due Process Clause of the Indian Bill of Rights," *North Dakota Law Review* 51 (Fall 1974): 191-204; Case Comment, "Equal Protection Under the Indian Civil Rights Act: *Martinez v. Santa Clara Pueblo, Harvard Law Review* 90 (January 1977): 627-36; Milva M. Alstad, "*Martinez v. Santa Clara Pueblo:* The Scope of Indian Equal Protection," *Utah Law Review* (1976): 547-57; Molander, "Indian Civil Rights Act and Sex Discrimination," *Arizona State Law Journal* (1977): 227.

17. For an in-depth discussion of litigation arising under the ICRA, see "The Indian Civil Rights Act," in *Manual of Indian Law* (Washington: The American Indian Lawyer Training Program, Inc., 1976), pp. B-1 to B-21; and American Indian Policy Review Commission, *Report on Federal, State, and Tribal Jurisdiction* (Washington: U.S. Government Printing Office, 1976), pp. 137-49.

18. For a bibliography of cases arising under the ICRA, see *National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources*, cum. ed., (Boulder: Native American Rights Fund, Inc. 1976); also see "A Bibliography of Selected Areas of Indian Law," compiled by National Indian Law Library, Native American Rights Fund, published by the Federal Bar Association in connection with the 1977 FBA Indian Law Conference; also see "The Indian Civil Rights Act," pp. B-15 through B-17.

19. American Indian Policy Review Commission, *Final Report* (Washington: U.S. Government Printing Office, 1977). I, pp. 211-14; cited hereafter as *AIPRC-FR*.

20. *AIPRC-FR*. I, 211-12.

21. See, e.g., *Loncassion v. Leekity*, 334 F. Supp. 370 (D.N.M., 1971)

22. *AIPRC-FR*, I, p. 213.

23. *AIPRC-FR*, I, p. 211.

24. *AIPRC-FR*, I, p. 211.

25. *AIPRC-FR*, I, pp. 211-12.

26. *AIPRC-FR*, I, p. 212.

27. *AIPRC-FR*, I, p. 213.

28. *AIPRC-FR*, I, p. 213.

29. *AIPRC-FR*, I. pp. 213-14.

30. *AIPRC-FR*, I, p. 212.

31. *AIPRC-FR*, I, p. 212.

32. *AIPRC-FR*, I, pp. 214-15; note that the Commission offered no formal recommendation with respect to the proper legal standard for the interpretation and application of the ICRA.

33. *AIPRC-FR*, I, p. 214.

34. *AIPRC-FR*, I, p. 214.

35. *AIPRC-FR*, I, p. 214.

36. *AIPRC-FR*, I, p. 214.

37. *AIPRC-FR*, I, pp. 214-15.

38. *AIPRC-FR*, I, p. 215.

39. *AIPRC-FR*, I, p. 215.

40. For a more detailed discussion of opposition to the ICRA, *see*, Muskrat, pp. 674-76.

41. ____ U.S. ____, 98 S. Ct. 1670 (1978).

42. 98 S. Ct. at 1673.
43. 402 F. Supp. 5.
44. 540 F. 2d. 1039.
45. 431 U.S. 913, 97 S. Ct. 2172, 53 L. Ed. 2d. 223 (1977).
46. 98 S. Ct., 1677.
47. 98 S. Ct. 1673.
48. 98 S. Ct. 1673-74.
49. 98 S. Ct. 1677.
50. 98 S. Ct. 1677.
51. 98 S. Ct. 1677.
52. 98 S. Ct. 1677.
53. 98 S. Ct. 1678.
54. 98 S. Ct. 1679.
55. 98 S. Ct. 1681.
56. 98 S. Ct. 1682.
57. 98 S. Ct. 1682-83.
58. 98 S. Ct. 1683.
59. 98 S. Ct. 1684.
60. 98 S. Ct. 1684.
61. 98 S. Ct. 1677.
62. 98 S. Ct. 1683.
63. 98 S. Ct. 1684.
64. 98 S. Ct. 1684, n. 32.
65. 98 S. Ct. 1680.
66. 98 S. Ct. 1681.
67. 98 S. Ct. 1681.

THE AMERICAN INDIAN POLICY REVIEW COMMISSION: REPERCUSSIONS AND AFTERMATH

Al Logan Slagle

In the early 1970s, violent confrontations between American Indian activists and state and Federal authorities led to the Indian occupation at Wounded Knee, South Dakota, the Washington State Fish In's, and the notorious sacking of the Bureau of Indian Affairs (BIA) headquarters in Washington, D.C.[1] While the dust from these battles darkened the political countryside — along with the pall of Vietnam and the blackness of Watergate — Senator James Abourezk proposed Senate and House Joint resolution No. 133 in 1973. In a much-revised form, that resolution became public law on January 3, 1975. Thus the American Indian Policy Review Commission (AIPRC) was born. The Commissioners' goal was to conduct a "comprehensive review of the historical and legal developments underlying the Indians' unique relationship with the federal government to support the formulation of more positive and effective national Indian policies and programs."[2]

Even in its best days, the AIPRC never enjoyed universal goodwill. Many early enthusiastic supporters of the study became disillusioned with it as various task forces aims and desires became apparent.[3] Months of furious activity by the eleven task forces ended in a 1977 Final Report with recommendations. Embedded in an awesome mesh of scholarly ruminations lay the authors' blueprint for a new Indian policy.

By the time the report was out, however, the mood of Congress and the public had shifted. Only in the sphere of Indian politics was interest and debate particularly fierce.[4] In many areas of the country, a new grassroots phenomenon — an anti-Indian backlash — had started to intensify. Actually the backlash had begun to congeal long before the creation of the AIPRC, and its participants and leaders rose to inveigh against the implementation of the AIPRC.[5]

After the AIPRC began operation, Indians knew that for the forseeable future congressional inaction and anti-Indian sentiment were going to provoke the same thorny problems Indians have always faced in dealing with non-Indians and American governments. As copies of the AIPRC's final report begin to gather dust, a new Indian policy seems as far beyond reach as ever — perhaps because, having politely received the AIPRC findings, Congress thinks it has shown enough humanitarian concern to last Indians for awhile.

The Commission's broad treatment of Indian problems was a cathartic post-mortem of past Federal-Indian relations.[6] Scholars and researchers could find little evidence of a net improvement in Indian living conditions since the last great "Indian Study": the 1928 Meriam Report.[7] All the much-touted reforms in the federal government's style of administering Indian affairs — including the 1934 Wheeler-Howard, or Indian Reorganization Act (IRA) — had been undermined or withdrawn before any of their potential beneficial effects could take hold.[8] The AIPRC flattered themselves that their 206 recommendations would form the basis of a new, fully integrated program of change in the 95th Congress — one that would endure. Their hopes have not been fulfilled. The reasons are not hard to guess.

Unless the electorate feel they have a stake in Indian affairs, Indian problems and claims are not likely to be taken seriously.[9] Further, many non-Indians are perhaps intrigued or puzzled when they hear that Indians still exist, but consider Indians' perennial grievances to be quaint — perhaps even mythical — annoyances.[10] In the presence of an unenlightened dominant population, America's Indian population, lacking in wealth, political influence and stable affiliations, have never been able to stand alone against the federal government's arbitrary policies. They can not hope for aid in new struggles against the termination of federal-Indian relations unless they can convince non-Indians of the disastrous effects such a move would have.[11] Relocation and termination policies have always dispersed Indian communities, only to create new problems and to move people with the same old problems into new places, while facilitating the exploitation of Indians and their resources.[12] Indians know this; Congress knows this now, if it didn't before the publication of the AIPRC's final reports; but the AIPRC, because it was not able to convince more non-Indians of the benefits of a good Indian policy, has not inspired immediate and vigorous moves for reform.

The last century has seen the partial reconstruction of tribal entities in all the contiguous forty-eight states, Hawaii and Alaska, as allotment and termination programs have given way to attempts at reorganization.[13] The General Allotment Act of 1887 (Dawes Act) disrupted Indian communities and families, led to the confiscation of land and resources, wrecked the habitability of old homelands, and nearly drove the tribes into extinction.[14] When the failures of the allotment policy became embarrassing, the 1934 experiment at reorganization began under the Wheeler-Howard Act (IRA). Under the IRA allotment ended and weak, supposedly interim, tribal governments and corporations were allowed to function as best they could under the incompetent thumb of BIA bureaucrats.[15] But IRA programs failed to push Indians into the mainstream of American society.[16] And in the Joseph McCarthy era, the tribes again faced the prospect of dissolution under House Resolution no. 108, the infamous "Termination Resolution." That resolution has never been recanted formally by Congress, but programs engendered under it have been withdrawn.[17] At last, in the early 1970s, Nixon announced the policy of Self-Determination,[18] and the AIPRC participants were convened to be the handmaidens of a Congress committed to the new policy.

In the beginning, AIPRC participants congratulated themselves for conducting the first inquiry into the administration of federal-Indian policy "in the history of this Nation to listen attentively to the voice of the Indian rather than the Indian expert."[19] Before the Commission had finished its work, however, a lone dissenter — the Commission's Vice Chairman, Congressman Lloyd Meeds — rose to denounce the rest of the team and their efforts.[20] It happened that Meeds had narrowly avoided being put out of office after sixteen years by a conservative opponent who relied on the anti-Indian vote in Meed's district.[21] For whatever reasons, in January 1977, Meeds began preparing a minority report in opposition to the findings of the AIPRC with the aid of his own miniature task force,[22] adopting for the first time the odd premise that Indian self-government and peaceful separatism were economic and social liabilities to the whole country.[23] While Meeds gave bland lip-service to the benefits of preserving traditional Indian cultures and values, those dissenting views have become a kind of "Assimilationist Testament."[24]

Before the AIPRC's final report was completed, Indians saw the draft version and task force reports. They denounced Congress for creating a Commission that had evoked painful memories and that had kept Indians busy just so Congress could get away with failing to cure those manifest inequities related in the reports.[25] Many readers felt that the Commission's scholars, like its predecessors, had dutifully reviewed the work of earlier hands, but had relegated crucial grassroots memorials to the task forces to a wasteland of headnotes, footnotes, appendices and hearings digests. It was all too clear that the Commission, attempting to educate Congress in Indian affairs without alienating them, had mostly looked for support for the prevailing attitudes of the 92nd Congress regarding "the Indian Problem."[26] True, the Commission's majority had managed to arrive at certain conclusions as to the proper legal and moral basis of federal-Indian relations.[27] But on the other hand, it was just this set of conclusions, and the recommendations founded thereon, that the Meeds dissenting views had denounced — to the delight of assimilationists — in favor of the notion that Indian claims should be wiped out along with tribal sovereignty, even if it meant the end of Indian culture.[28] Later Meeds acquiesced, even embraced the doctrine that Indians must assert their usefulness to the enveloping dominant society, a society yearning for the remainder of tribal lands and resources.[29] Meeds had lent encouragement to many non-Indians convinced that America and the world have little to gain from allowing semi-autonomous traditional Indian communities to stand in the way of the desires of the dominant culture. He had in effect blunted the final report of the AIPRC.[30]

The majority of commissioners settled on a plan for achieving workable compromises between state and local governments and the tribes without needless federal interference: "the most obvious and satisfactory manner of settling . . . disputes between tribes and States lies in the direction of negotiated settlements and/or intergovernmental agreements," wherein parties could "define the nature and extent of interests."[31] In altercations over mining, water rights, boundaries, land controls, taxation, and civil and criminal jurisdiction such a system of tribal-state compacts would permit "a degree of flexibility which allows for mutual modification in the event of changed circumstances . . . not possible through the process of litigation or Federal legislation."[32] The Tribal State Compact Act of 1978 embodies the AIPRC's suggestion. The measure could offer a substitute for the "historical inevitability" of unilateral Indian assimilation by fracturing the illusion that Indian and non-Indian governments can not coexist to their mutual benefit. The end result can be a mutual assimilation. The alternative to such cooperation is more strife and confusion, and Meeds has offered no proof to the contrary.

The AIPRC could not see how ending Federal-Indian relations or effectively reducing the burden of trust and treaty responsibilities could assure concord and progress. The real threat of abrogation is enough to cause Indians considerable distress. Given that Indians will continue to have that anxiety until there is real improvement in federal-Indian relations, Indians must continue to promote a change in the non-Indians' attitudes on "the Indian problem" until such a change happens. There can be no substitute for intertribal action in this matter, as history has shown. At times, some common grievances have united Indians in ephemeral movements or alliances so they could present their enemies the appearance of a united front, and at those times they have won respect — even concessions — from the United States. Such concessions included the convening of the AIPRC itself; but episodic unions provide only weak alternatives to persistent, concerted planning and work stretched over long periods of struggle. To this fact, other non-white and white minorities will attest. Lately, Indians have been striving to build some stable political alliances, even inviting the participation of non-Indian sympathizers.[33] The great hope of Indians lies in using the power of such alliances to their best advantage, devising and implementing a "non-Indian policy" of their own. In creating their policy, Indian politicians can use the AIPRC final report as a source without having to adopt it as their own.[34] Tribal leaders and members may agree with the Commissioners that "the powers they are seeking are no more and no less than those of any local sovereign of these United States ... the objectives they seek are peace and tranquility within the reservation boundaries and economic independence which will permit them to operate free of the federal purse strings without fear of termination.[35] However, Indians can not settle for a peace that does not include a new federal commitment to keep substantially all of America's promises to its Indian citizens. Congress and the federal bureaucrats have assumed for too long that Indians will settle for being left alone.[36] The time may come when Indians will have to reject the AIPRC's recommendations as worthy of their full support.

According to Vine Deloria, Jr., the muddled state of Indian politics and the Commission's report will prove obstacles to tribal interests for the forseeable future.[37] He says the report "will ... add little or nothing to the failed recommendations of previous commissions. From the beginning, as a Congressional response to Wounded Knee occupations, it has been embroiled in Indian politics. It has been maneuvered, as well, by the survival instincts of BIA officials"; still, "for years to come its work will have to be lived with, and detoured around if real improvements are to be made."[38] Up to now, for example, the prospect of a speedy restructuring of the BIA — to render it responsive as a service — delivery system and inoperative as a managerial bureaucracy — has remained a fond dream, despite the appearance of the AIPRC's final report.[39] The AIPRC wanted the present administration to devise an action plan to implement AIPRC recommendation for full-scale BIA reorganization;[40] the Carter administration has responded with hearings and reports with little substance.[41]

Deloria's critique of the AIPRC and present Indian Policy cited seven unsound controlling assumptions of non-Indians for today's troubles.[42] Deloria also offered his own guidelines for an effective Indian Policy. His roadmap covers the same basic points as the AIPRC's immensely more elaborate laundry-list of recommendations — a laundry list which to date has inspired only a handful of fairly conservative reforms.[43] Congress has ignored his piece of political wisdom: "If there is to be fundamental reform, the number of programs must be adequately funded with a minimum of red tape, and they must be very tightly monitored," and "*if* undertaken together (and without the usual fanfare which accompanies proposed changes in Indian affairs), within a few years a dramatic change for the better would be evident ..."[44]

No fundamental change lies on the near horizon in Indian Affairs two years after the publication of the AIPRC's final report (which only goes to show a study has no more weight simply because the public paid for it, and that so far, Deloria's predictive ability still looks good). As Steven Talbot puts it:

> although some friends of Indian people, progressive non-Indians, had hopes for this Commission, I think ... the results of the Commission and the way Commission reports are being used are a great disappointment to those hoping for some progressive measures. ... I heard Hank Adams of the Commission ... describe his hopes. [Afterwards] he was ashamed for being associated with the Commission[46].

Whether Congressional inaction is due to indifference of intolerance, the fact is the present climate in Washington, D.C. is not hospitable to change. As Deloria says, "when Congressman Meeds complains throughout his dissent that you can't rewrite 400 years of history, what he really means is that when a certain view of history has become so deeply engrained in America's consciousness it is virtually impossible to change that ..." Deloria and the AIPRC advise "a very long-term, well-concentrated educational process that may take 100 years, to correct the inaccuracies that have crept into history and those that became the basis of the doctrines that carry over into the heart and life of Indian communities."[47] Obviously, reconditioning only non-Indians to respect Indians is not enough. During the attempt to raise the consciousness of non-Indians, the same pedagogic zeal must be applied in Indian Country, where Indians maintain the integrity of their cultures in their minds, activities and records. It will matter little what the world thinks if Indians ever lose heart at home.

Loss of heart among Indians would be understandable considering the progress to date in implementing the "Self-determination Policy." Just before the AIPRC began its work, one writer congratulated the tribes on keeping their wits about them through the centuries of federal stupidity that preceded the glorious advent of President Nixon's new Indian Policy.[48] He celebrated congressional efforts to implement the policy by increasing the direct flow of funds to the tribes, "to free tribes from their tutorial dependence on the United States."[49] He cheerfully recollected that in Lyndon Johnson's administration, Senator Sam Ervin championed the Indian Civil Rights Act (ICRA) and managed to get it passed, thereby guaranteeing the conformity of Indian tribal constitutions with many Federal constitutional amendments.[50] Time has shown the "direct flow of funds" did not come without strings attached; and whatever else the passage of the ICRA might have accomplished, one thing is clear now — it certainly washed Indian judicial institutions nearer the American mainstream.[51] Such legislative attempts to "help the Indians" have hindered the consensual, internal and organic development of tribal institutions.

The "Indian Self-Determination and Education Assistance Act" supposedly represented what Daniel Israel called "a significant commitment on the part of the United States Congress to strengthen the governmental and economic powers of the Indian tribes."[52] Yet the AIPRC was witheringly critical of the administration's application of the act, and in recent months Senator James Abourezk has called Assistant Secretary of the Interior for Indian Affairs Forrest Gerard's maladministration of that act "a funeral service for self-determination."[53] On the contrary, Abourezk finds the existence of the new law has merely made BIA bureaucrats work harder at insuring their own job security.[54]

Daniel Israel's optimistic findings seem fantastic today in light of recent moves in Washington to secure total and unilateral abrogation of all Indian treaties.[55] True, in the 95th Congress, the AIPRC majority recommendations packed some clout compared with the proposals of the abrogationists — because Senator James Abourezk was still dominating the Senate Select Committee on Indian Affairs. But we now have a new Congress from which Meeds and Abourezk will be conspicuously absent. Partly because of their pro-Indian records, neither can get reelected. Whatever happens in the present Congress is unlikely to equal the amount of activity in the last, unless remarkable new partisans in Indian politics emerge.[56] Many small bills, based on AIPRC recommendations, passed in the last two years because abrogation bills were blocked, or died in the House and Senate.[57] The Meeds and Jack Cunningham bills received notoriety as "warmed-over termination efforts with a public relations gloss," embodying the 'Use it or lose it' philosophy brought to perfection"[58]; and despite attempts to rehabilitate them in the public eye, those bills have not fared well.[59] Indian leadership responses to legislation on Capitol Hill indicate an unwillingness to submit to any new effort to revive the "Spirit of H.R. 108". Several Indian leaders sent a message to Congressman Thomas O'Neill, Speaker of the House of Representatives, on November 3, 1978.[60] The memorial denounced the new "backlash bills," and in effect called for an end to such idiocies.

Of all the backlash bills, the one most fearsome in its implications, and most deserving of Indians' concern and opposition, is Cunningham's "Native Americans Equal Opportunity Act." Calling for the abolition of federal-Indian relations *per se*, Cunningham says that his bill is intended to achieve two of his campaign promises: to "resolve the controversy surrounding the Boldt Decision," and to "end the paternal and protective role currently being played by the Bureau of Indian Affairs, which holds Indians back from being assimilated into the U.S. work force and continues Indians as a special class."[61] Cunningham's statements suggest he labors under the bizarre delusion that treaty lands and rights were greedily wrung from fatuous, well-meaning whites by sharp Indian treaty-delegates. Cunningham sympathizes with the often vindictive acts of non-Indians — such as the state of Washington's commercial and sports fishermen — who refuse to admit America should keep her side of her bargains with the tribes. Cunningham does not merely echo the old nineteenth century sentiment that conquering the continent is non-Indian America's duty and manifest destiny. His pet sophistry is that his proposals would liberate tribesmen by giving them "a chance to have tribal corporations to manage the land with tribal members as stockholders."[62] He would have the public believe he has come up with something better than the provisions of IRA, though under his plan jurisdiction and sovereignty presently in the hands of tribal governments *as local governments* "would fall to federal, state and local governments beyond tribal powers,"[63] as a practical matter, in almost every instance. His words suggest a chilling scenario in which established tribal government and business councils in Indian Country — surrounded by non-Indians and *their* political and economic establishments — will have to try to survive, if at all, as the majority government of Indians and non-Indians. Indian traditional government would have to contend with the priorities and prejudices of all those who presently hold land under patents or lease arrangements on the reservations, as well as endure efforts of non-Indian settlements to engulf and replace Indian-run governments. Local Indian politics, economics and social order would be under direct assault by non-Indian entrepreneurs looking for a secure interest in resource-laden reservation lands. Where Indians are the numerical minority, their communities could gradually dissolve into isolated backwaters for the supposedly emancipated, politically impotent "new minority." Termination would assure the refinement, not the denouement, of discrimination wherever Indian communities have maintained their rights and dignity until now even in the face of invidious behavior of neighbors like the non-Indian fishermen of Washington state.[64]

The new Congress, then, presents Indians with yet-uncertain hopes and challenges. The Carter Presidency presents another enigma, for Carter may not have done Indians any harm, but will he ever do Indians any good? Of Nixon, Israel wrote: "President Nixon very wisely saw that the policy of forced termination rather than emancipating the Indians had the opposite result of creating an ever-greater paternalistic dependence on the federal government. It was the President's purpose to reverse that trend."[65] Carter has not aggressively followed that new course. Rupert Costo, editor of *Wasseja*, has observed that Carter has offered since his election — "not one statement ... concerning the many serious and even desperate issues confronting the tribes."[66] The *Native Nevadan* recently reproduced, without comment, Carter's campaign promises to Indians — all still to be fulfilled.[67] Wendell Chino said of Carter's benign neglect of Indian Affairs: "If Carter has enough time to worry about human rights in Latin America and poverty in

Africa, he should find time to visit American Indians."[68] Carter kept his absurd pledge to duplicate the AIPRC's BIA management study. The BIA task force was a needless undertaking, a pitiable substitute for actually revamping the service-delivery mechanism.[69] A real change might not be possible in just one presidency, to be sure. Still, one has to start somewhere, to give time to break down public resistance: "announcements of structural changes in the BIA [have] always triggered an irrational response from Indians," and "much of that trauma can be traced to Bureau employees on the local level who actively stirred up sentiment against the changes."[70]

If Congress and the President resort to further dilatory tactics, they face the risk — perhaps a small one— that Indians may once again reach for control out of sheer desperation. Lonnie Racehorse writes: "Self-determination is going on right now and cannot wait for the Bureau to bundle through a series of reviews that lead nowhere. Do not ask us to wait any longer."[71] On the other hand, Professor Rennard Strickland fears that Indian leaders and bureaucrats — such as Forrest Gerrard — are beginning to mimic the evil they have beheld so long:

> The Indian leader has figured out both how to manipulate, and yet is being manipulated, by the no-name, too-many-program, easy-solution-with-the-dollar-bureaucrats. Thus the Indian problem is becoming a bureaucratic one . . . Today the Indian is in another medicine show — one where he is not given rations but one where he is given per diem, and plane tickets, and "programs to manage." And in the process the administrator and the administered feed upon each other.[72]

Where else can Indians look for help these days to get redress of grievances? Two years ago, just before the AIPRC, one would have said the U.S. Supreme Court and the Federal Courts. It has become evident since then that the Supreme Court is weary of being expected to resolve every controversy Congress, the States and Executive could clear up if they would learn to cooperate with the tribes. The case of *Puyallup Tribe v. Department of Game* clearly telegraphed that message. Justice Brennan, dissenting furiously, denounced that attitude to his brother justices, to no avail:

> Doubtless 13 years of litigation has made the Court anxious to bring this case to an end, and this explains today's holding — just broad enough to dispose of the Puyallup's substantive claim but so narrowly fact-specific that it will probably have no significant impact on the Puget Sound fishing rights case.[73]

Puyallup teaches that the Court was tired of hearing about Puyallup Indian troubles; and the history of the Washington state fishing war leading up to that long court battle shows that regardless of whether Indians work to protect rights and property and are legally correct in pressing their claims, the whittling away of those rights can and probably will still proceed. If a tribe compromises in advance and seeks a money judgment, rather than fight for land or rights it knows non-Indians will never concede, the tribe will no doubt be accused of sheer mendacity, and their moral and legal claims will be summarily discredited.

Many felt *Oliphant v. Suquamish* would be a landmark case for upholding the principle of retained tribal sovereignty, and that the Court would find a tribe's jurisdiction in criminal matters extended to non-Indian criminal suspects and misdemeanants in actions arising on the tribe's own reservation. The Court found instead that, generally, the authority of Indian tribes in such matters had been consistently and successfully undermined, and that it cannot be admitted to exist now in the absence of express congressional authorization. The notion of Congress's plenary authority was found in the supreme doctrine of federal-Indian relations. The Court was unimpressed with the AIPRC majority's ruminations regarding tribal sovereignty and jurisdictions, though the Court declined the Meeds dissent's rash suggestion that they find tribal sovereignty and jurisdiction to be void. Rhenquist adopted Meed's notion that "general jurisdiction has not been asserted and . . . the lack of legislation on this point reflects a congressional assumption that there was no such tribal jurisdiction."[74]

Other recent Court decisions underscore Congress' plenary authority, minimizing the importance of the principle that the tribes retain whatever sovereignty they have not released.[75] Indians have much more to gain, then, by lobbying in the halls of Congress.

Now that the AIPRC is a fading memory, American Indians must rely on their own efforts to remind legislators that regardless of ancestry, any aggregation of individuals is first a community of consenting companions. Indians have every right — legal, political, economic, and ethnic — to resist a process of assimilation that is not gradual, mutual and reciprocal. Until someone finds better alternatives, the AIPRC recommendations represent the best hope for building an equitable new policy, one that will allow national unity through the gradual assimilation of Indians as members of the dominant society.

Many national Indian organizations favor some or all the AIPRC proposals.[76] On the other hand, traditional opponents of Indian rights and treaties — plus some new ones — oppose those recommendations.[77] Environmentalists fought the Havasupai Indian efforts to secure an ancient homeland that happened to lie on the floor of the Grand Canyon. A hundred non-Indian leaseholding ranchers on the Pine Ridge Reservation have organized Civil Liberties for South Dakota Citizens (CLSDC) — a vigilante and abrogationists' league. Sport and commercial fishermen in Washington state still fight to obliterate Indians' treaty-guaranteed fishing rights. In that state's Puget Sound, the Lummi Property Owners (LPO) resist every effort of local tribes to receive compensation for land the LPO members live on.[78] The Western Interstate Regional Conference of the National Association of Counties voted full support for Meeds' AIPRC views in February 1978.[79]

In the spring of 1978, Indians decided it was time to mobilize, and all the national Indian organizations sent delegates to Window Rock, Arizona to form a "Standing Committee on Treaties and Rights."[80] On Thursday, April 14, 1978, the Committee announced its intent "to see that things coming out of Indian organizations are coordinated and disseminated, ... [to promote] a unified national stance on key issues ... [and organize a lobbying team to design] coordinated messages for delivery to the Congress, the White House, the United Nations and elsewhere."[81]

At Window Rock, Navajo Reservation Chairman Peter McDonald called for a "set of arrangements like the Allies developed in World War II, an allied command post, which would be responsible for finding new ways to restore the sense of good will and concern that before was our greatest asset."[82] The allies include both Indians and non-Indian associates. Since that time, the allies have been issuing statements of purpose, seeking anew the cooperation of the public and politicians, still remembering the charge of a Kiowa elder's benediction: "Let not the wind blow with no rain following."[83] It is wise for the allies to continue in the spirit of Window Rock, for maintaining that spirit is their only hope.

NOTES

1. Vine Deloria, Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (New York: Dell, 1974), pp. 1-83.

2. American Indian Policy Review Commission, *Final Report* (Washington: U.S. Government Printing Office, 1977), I, p. 3; cited hereafter as AIPRC and *AIPRC-FR.*

3. Lloyd M. Meeds and Vine Deloria, Jr., "Meeds and Deloria Debate the AIPRC," San Diego State University, San Diego, California, April 15, 1978; cited hereafter as "Meeds/Deloria Debate."

4. Anonymous, "On the Policy Review Commission," *Akwesasne Notes*, (December 1977): 18.

5. Carole Wright, "What people have formed backlash groups?" *Yakima Nation Review* (July 18, 1978): 10.

6. *AIPRC-FR*; see especially pp. 51-81.

7. *AIPRC-FR*; see especially pp. 87-94.

8. *AIPRC-FR*, pp. 130 ff. and pp. 238-47.

9. *AIPRC-FR*, pp. 68-81.

10. Robert F. Berkhofer, *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Alfred A. Knopf, Inc., 1978), pp. 188-94.

11. *AIPRC-FR*, pp. 76-77.

12. Berkhofer, p. 192.

13. *AIPRC-FR*, pp. 3, 51, 61, 66, 74-77, 91, 247, 281, 622.

14. *AIPRC-FR*, pp. 66-67.

15. *AIPRC-FR*, pp. 71-73.

16. *AIPRC-FR*, pp. 73-74.

17. *AIPRC-FR*, pp. 151-153.

18. Richard M. Nixon, "The American Indians — Message from the President of the United States," *Congressional Record* 16 (1970): 23131-32.

19. *AIPRC-FR*, p. 3.

20. *AIPRC-FR*, pp. 571, 572.

21. Anonymous, "Meeds Will Not Run for Reelection," *American Indian Journal* (February 1978): 26. Quite soon thereafter, Meeds cited political pressures such as offers of huge campaign contributions from special interest groups and constituents too eager for an end to the Washington state Indian fishing controversy as reasons for his early retirement.

22. *AIPRC-FR*, p. 572.

23. *AIPRC-FR*, pp. 609-612.

24. *AIPRC-FR*, pp. 284-285.

25. Deloria, "Meeds/Deloria Debate." Deloria's early disillusionment with the AIPRC, recently described in the debate with Meeds, was typical of many Indian laymen and leaders: "What I hoped would happen was that Congress would authorize Senators and Congressmen to go to the Indian communities as the Senate Indian Committee did from 1928 to 1936 to see the conditions under which the people lived and to introduce remedial legislation to clarify a lot of these things that could be resolved without getting involved in a lot of the controversies over the conceptual arguments of Indian Policy. As I recall, Senator Bartlett, at the request of the Nixon Administration, began to amend the bill while it was in the Senate. At the point it reached the House and it had all those Task Forces, I simply threw up my hands." Deloria, "Meeds/Deloria Debate."

26. *AIPRC-FR*, p. 9; the "sense of Congress" was that:

> (1) the trust relationship and treaty rights were poorly defined and confusing concepts basic to Indian law;
>
> (2) Tribal governments held a poorly defined and seldom-understood status in the federal system;
>
> (3) Indian people were perplexed and impeded by a massive bureaucracy whose function and merit were perpetually questioned by Indians and non-Indians alike;

> (4) Indians and non-Indians on reservations were enmeshed in jurisdictional disputes with municipal, county, State, and Federal powers;
> (5) education of Indians was questionably administered and had disappointing results;
> (6) Indian health was substandard;
> (7) Reservations were underdeveloped and economic planning was insufficient for development;
> (8) Off-reservation Indians were alienated and disenfranchised;
> (9) Federal-Indian laws were complex and often absolute, and never received the scrutiny needed for proper revision;
> (10) A number of tribes were unreasonably excluded from the Federal-Indian relationship; and
> (11) Alcoholism and drug abuse were afflictions which caused especially severe problems for the Indians population.

27. *AIPRC*-FR, p. 4. The Commission's majority adopted the following principles as the proper legal and moral basis for future Federal-Indian relations:

> (1) That Indian tribes are sovereign, political bodies, having the power to determine their own membership and power to enact laws and enforce them within the boundaries of their reservations; and
> (2) That the relationship which exists between the tribes and the United States is premised on a special trust that must govern the conduct of the stronger toward the weaker.

28. *AIPRC-FR*, pp. 573-583, 602-612.
29. *AIPRC-FR*, pp. 571, 611-612.
30. *AIPRC-FR*, p. 574.
31. *AIPRC-FR*, p. 624.
32. *AIPRC-FR*, p. 624.
33. Berkhofer, pp. 188-197.
34. *AIPRC-FR*, p. 153.
35. "On the Policy Review Commission," Editorial Comment, *Akwesasne Notes* (December 1977): 18. Segualise, an Iroquoian traditional leader, told Kirk Kickingbird, former counsel to the Commission:

> The Policy of the Review Commission is the latest response in the ongoing colonization of our lands. It started out as a demand made in 1972 at the time of the Trial of Broken Treaties for treaty commissions to review the treaties and the abrogations and to address those abrogations. But American response was to create a Policy Review Commission and to measure the effects of their policies in Indian Country and possibly to refine those. Our People, Hau do no sau nee, and several other traditional governments still maintain that they are independent, separate governments of the Americas.

36. Lonnie Racehorse, "We Won't Wait for Bureau Reorganization," *Wassaja* (January/February 1978): 2. Racehorse, of the Idaho Inter-Tribal Policy Board, wrote:

> We are tired of waiting for the federal BIA to overhaul itself. Too many times the Bureau has failed to act, acted inappropriately, or not acted in the best interests of the Indians whom they are to protect . . . The Bureau is failing in its basic mission of providing needed services to the reservations and Indian people everywhere . . . The American Indian Policy Review Commission has made a similar study of BIA management, held similar hearings on reorganization, but in the end nothing was done.

37. Vine Deloria, Jr., *A Better Day for Indians* (New York: Field Foundation, 1977), pp. 7-10; cited hereafter as *Better Day*.

38. Deloria, *Better Day*, p. 12.

39. Anonymous, "Special Hearings on BIA," *Wassaja* (March 1978): 4.

40. *AIPRC-FR*, recommendations 63-68, pp. 22-23; and recommendations 47-77, pp. 21-24.

41. BIA Reorganization Task Force, *Report* (Washington: U.S. Government Printing Office, 1978).

42. (1) *"that Congress is presumed to act in good faith towards Indians,"*
(2) that *"past policies were based upon some intelligent criteria,"*
(3) *"the solution of Indian problems is . . . a simple adjustment of already existing programs,"*
(4) an attitude that Congress has implicit, unlimited powers and is its own proper judge of the morality and propriety of its acts *"views Indian lands and communities as laboratories which can be used to test various theories of social engineering,"*
(5) that, under its plenary authority, and because tribal governments' existence on tribal lands is a mere indulgence, *"the federal government can use Indian lands at its discretion,"*
(6) that the federal establishment has *"the privilege . . . to avoid difficult decisions,"* and
(7) that *"tribal rights are nuisances, that can be abated as need be"* (Deloria, *Better Day*, pp. 7, 9, 10).

43. Deloria calls for Congress to voluntarily curb its free-wheeling interpretation of its plenary authority over Indian affairs, an authority attributed to Congress under the U.S. Constitution: art. I, sec. 8, clause 3; art. II, sec. 2, clause 2; and art. I, sec. 8, clause 1. His recommendations parallel the main features of the AIPRC's plan. He suggests the elimination of "law-created distinctions among Indian communities" (Deloria, *Better Day*, p. 17; compare *AIPRC-FR*, pp. 368-424, 426-442, 459-484, and recommendations 122-197, pp. 31-44); "revising and clarifying tribal membership" (Deloria, *Better Day*, p. 21; compare recommendations 162-177, *AIPRC-FR*, pp. 36-41); "a new set of definitions of the political status of an Indian nation, tribe, or band" (Deloria, *Better Day*, p. 25; compare *AIPRC-FR*, pp. 142-335, recommendations 7-46, pp. 13-21); the creation of a "single court to handle all controversial legal issues between an Indian tribe and other political entities, wherein the proper historical and cultural considerations necessary to understand the Indian viewpoints would become part of the process of problem-solving and reconciliation" (Deloria, *Better Day*, p. 26), and "arbitrating, and definitively settling, longstanding claims which have created mistrust of the government" (Deloria, *Better Day*, p. 28; compare *AIPRC-FR*, recommendations 5 and 6, pp. 12-13); "consolidating and restoring the reservation land base, thus providing a sensible and realistic basis for communal existence" (Deloria, *Better Day*, p. 30; compare *AIPRC-FR*, recommendations 78 and 79, pp. 24, 25 and pp. 303-364); "providing more efficient services to individuals receiving the benefits of social programs" (Deloria, *Better Day*, p. 34; compare *AIPRC-FR*, recommendations 122-153, pp. 31-35 and 304-365).

44. Deloria, *Better Day*, pp. 15-34.

45. "On the Policy Review Commission," p. 19.

46. Deloria, "Meeds/Deloria Debate."

47. Deloria, "Meeds/Deloria Debate"; *AIPRC-FR*, pp. 231-296.

48. Daniel H. Israel, "The Reemergence of Tribal Nationalism and its Impact on Resource Development," *University of Colorado Law Review*, 47 (1976): 624, 625.

49. Israel, 624.

50. See Ervin's remarks in *Hearings on the Constitutional Rights of the American Indian before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee*, 88th Cong., 1st Sess. (Pt. IV), p. 131.

51. See *Dodge v. Nakai*, 298 F. Supp. 26 (D.-Ariz. 1969); discussed in Monroe E. Price, "Lawyers on the Reservation: Some Implications for the Legal Profession," *Law and the Social Order* (1969): 175-179, and Alvin J. Ziontz, "In Defense of Tribal Sovereignty: An Analysis of Judicial Error in Construction of the Indian Civil Rights Act," *South Dakota Law Review* 20 (1975): 1, 49 ff.

52. Israel, 626.

53. Anonymous, "Gerard Testifies on Self-Determination," *UIPA News* (May 1978): 8.

54. "Gerard Testifies," 8.

55. Anonymous, Note, *Wassaja* (Autumn 1977): 19.

56. Sen. James Abourezk, "Survey and Analysis of Indian Legal Developments," *Indian Law Reporter* 5 (January 20, 1978): M-1 to M-5; an[illegible] (February 20, 1978): 0-1 to 0-25.

57. Abourezk, 2.

58. Rupert Costo, "Meeds and the Policy Review Commission," *Wassaja* (November, 1977): 2.

59. Anonymous, "Cunningham Bill Is Ridiculed, but Tribes Say They Will Continue Fight Against the Anti-Indian Bills," *Wassaja* (July 1978): 14. See also, Anonymous, "Cunningham Announces Plan to Modify Legislation," *Navajo Times* (July 20, 1978): A-21.

60. Costo, 2. Signatories to the memorial included President Veronica Murdock of the National Congress of American Indians (NCAI), President Joseph De la Cruz of the National Tribal Chairman's Association, John Echohawk of the Native American Rights Foundation; and President La Donna Harris of American Indian Opportunity. They wrote:

> (1). "the proposals would serve to create, not resolve, inequities;"
>
> (2). "courts, without exception have held that the exercise of Indian governmental rights is not incompatible with the constitutionally guaranteed rights of non-Indians;
>
> (3). Congress has "through major legislation enacted during the 1970's, . . . repudiated" the policy of termination;
>
> (4). "Congress has recognized and maintained a federal Indian policy of longstanding duration;"
>
> (5). "Not only has the practical application of P.L. 280 been judicially checked, but the wholesale imposition of state jurisdiction upon Indian tribes has proved unworkable and problematic for both states and tribes;" and
>
> (6). "The provisions regarding Indian water rights propose to substantially alter existing law and entitlements [illegible]. look[ing] into the law the gross violations of Indian legal rights which have taken place in the past, many of which are presently being adjudicated by the federal government on behalf of tribes."

61. Anonymous, "Cunningham Proposals End Treaty Era," *Yakima Nation Review* (September 14, 1977): 1; for Judge Boldt's decision see *United States v. Washington*, 384 F. Supp. 213 (W. D. Wash. 1974), *aff'd* 520 F. 2d 676 (9th Cir. 1975), cert. den., No. 75-588, 44 U.S.L.W. 3426 (Jan. 27, 1976).

62. "Cunningham Proposals," 1.

63. "Cunningham Proposals," 20.

64 See fn. 61, above; for a contemporary masterpiece of anti-Indian propoganda, see C. Herb Williams and Walt Neubrech, *Indian Treaties: American Nightmare* (Seattle: Outdoor Empire Publishing Company, 1976).

65. Israel, p. 630.

66. Rupert Costo, "Carter," *Wassaja* (Janary/February 1978): 7.

67. President James E. Carter, "Candidate Carter said," *The Native Nevadan* (April 1978): 8. Carter was not without promise at the outset. In fact, he made lots of promises. He said he would "insure that Indian families are assisted and bolstered by government policies," see to it "that to the greatest extent possible programs for Indian tribes [would be] designed, implemented, and managed by Indian tribes," and that Indian people would "be able to make their own decisions regarding budget priorities, the operation of Indian schools, the best use of their land, water, and mineral resources, and the direction of their economic development." He acknowledged ruefully that "duplication of effort, waste, and neglect pervade the administration of programs, while newly enacted legislation is often bogged down for months waiting for the bureaucracy to develop confusing administrative regulations," and that "Federal dollars appropriated for Indian programs are often misspent and misallocated to programs that are unwanted by, and of little use to Indians" ("Candidate Carter said," 8). He admitted that "the rights of Indian families to raise their children as they wish has not always been respected by the government," and said he would take steps to resolve this old problem by means of economic and social reform ("Candidate Carter said," 8). He sounded so much like a majority of the AIPRC when he said, "I will not take unilateral action on any issue regarding Indian affairs, or Indian programs without full consultation with tribal representatives. Ours will be a government of participation, of action, of program involvement, and of true self-government" ("Candidate Carter said," 8).

68. Molly Ivins, "Indians Work Against Backlash," *Los Angeles Herald Examiner* (April 17, 1978): 10.

69. Anonymous, "Gerard's 'package' of plans for the BIA'" *Yakima Nation Review* (September 14, 1978): 9. When Forrest Gerard took office, he announced the administration's intent to restructure the BIA according to the AIPRC's recommendations, based on the AIPRC's BIA management study. (*AIPRC-FR*, pp. 22, 23, 227 ff.) See "Special Hearings on BIA," p. 4, citing Abourezk's denunciation of the BIA's decision to investigate itself rather than change: "The way to reorganize the BIA is not to restudy it, but simply to do it." Compare *AIPRC-FR*, recommendation 63, pp. 22, 23 with BIA Reorganization Task Force, *Report*, IV-1 ff. especially the "Action Plan," p. IV-54. ff.

70. Deloria, *Better Day*, p. 13.

71. Lonnie Racehorse, p. 2.

72. Susan Witt, "Indian Policy draws fire," *Tulsa Tribune* (April 6, 1978): 11.

73. *Puyallup v. Dept. of Game* 97 Sup. Ct. 2627 (1977).

74. *Oliphant v. Suquamish*, 46 U.S.L.W. 4214, n. 15. See *AIPRC-FR*, p. 587.

75. See *U.S. v. Wheeler*, 98 S. Ct. 1079 (1978), and *Santa Clara Pueblo v. Martinez*, 98 S. Ct. 1670 (1978). The latter makes extensive use of the AIPRC's majority findings (pp. 1080-1081), suggesting that at least Marshall and other liberal justices sympathize with the majority views generally, and will refer to them in the future.

76. Andrew W. Ebona [President, United Indian Planners Association, and member of NCAI], "Ebona Addresses White House Conference," *UIPA News* (May 1978): 11.

77. Carole Wright, 10.

78. Carole Wright, 10.

79. Jim Lewis, "County Officials Open New Front in Anti-Indian War," *Wassaja*, 6(1), (1978): 1.

80. Anonymous, "Counteroffensive: The Spirit of Window Rock," *Yakima Nation Review* (April 1978): 1. Members of the new coalition include: National Congress of

American Indians, National Indian Youth Council, American Indian Opportunity, American Indian Movement, the Navajo Tribe, International Indian Treaty Council, National Indian Brotherhood of Canada, and the Hawaiian Coalition for Native Claims.

81. "Counteroffensive," 10.

82. "Counteroffensive," 10.

83. "Counteroffensive," 11. See the Longest Walk Manifesto, in Anonymous, "Affirm Sovereignty of the Indigenous People of the Western Hemisphere," *American Indian Journal*, 4(9), (1978): 25; and an addendum by the Dine, Haudenosaunee, and Lakota, "Statement to the People of the United States and the World — July 1978," *American Indian Journal*, 4(8), (1978): 46.

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